86-195
No. -

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JOSEPH F. SPANIOL, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ARKON SHIPPING AGENCY, INC.,
KONKAR SHIPPING AGENCIES, S.A.,
AND KONKAR RESOLUTE CORPORATION
Petitioners

v.

AMALIA KASSAPAS, individually and as personal representative of the estate of Georgios Kassapas, and as trutrix of the estates of the minor children, NIKOLAS KASSAPAS and CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSAPAS; GEORGIOUS LAMBOU, individually and as personal representative of the estate of Andreas Lambou; VASILIKI LAMBOU; SOFIA LAMBOU; and VASILIKI LAMBOU

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

GERARD T. GELPI
Counsel of Record
ROBERT P. MCCLESKEY, JR.
GELPI, SULLIVAN, CARROLL & LABORDE
430 Notre Dame Street
New Orleans, Louisiana 70130
(504) 524-9714

Counsel for Petitioners

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

QUESTION PRESENTED

I. Must the general maritime law, as fashioned by Congress and the federal courts, be applied by a state court hearing a maritime claim pursuant to the "savings to suitors" clause found in 28 USC §1333? If so, can a Louisiana state court refuse to apply an essential feature of the general maritime law—the doctrine of *forum non conveniens*—and thereby destroy uniformity and create conflict between state and federal courts hearing identical maritime claims?

LIST OF PARTIES

The parties involved in the instant matter are as set out in the caption. The corporate petitioners have no parent, subsidiary or affiliated companies.

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AND KONKAR RESOLUTE CORPORATION

Petitioners

v.

AMALIA KASSAPAS, individually and as personal representative of the estate of Georgios Kassapas, and as trutrix of the estates of the minor children, NIKOLAS KASSAPAS and CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSAPAS; GEORGIOUS LAMBOU, individually and as personal representative of the estate of Andreas Lambou; VASILIKI LAMBOU; SOFIA LAMBOU; and VASILIKI LAMBOU

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

Petitioners respectfully seek writ of certiorari to review the judgment of the Louisiana Fifth Circuit Court of Appeal and the denial, without opinion, of petitioners' application for writ of certiorari or review to the Louisiana Supreme Court. Specifically, the

judgment of the Louisiana Fifth Circuit Court of Appeal held that the federal maritime doctrine of *forum non conveniens* is not to be applied to dismiss a Jones Act, 46 U.S.C §688, and general maritime law claim brought in Louisiana state court, as the Louisiana Code of Civil Procedure does not provide a statutory vehicle for dismissal on that basis.

OPINIONS BELOW

The order of the Supreme Court of Louisiana, denying petitioners' application for writ of certiorari or review is reported at 488 So.2d 203 (La. 1986) and is set forth in the Appendix to this Petition at 1a-2a. The judgment and opinion of the Louisiana Fifth Circuit Court of Appeal, reported at 485 So.2d 565 (La. App. 5th Cir. 1986), appears in the Appendix at 2a-7a. The judgment and reasons for judgment of the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana, were not reported, but are set forth in the Appendix at 7a-13a.

JURISDICTION

The judgment of the Louisiana Fifth Circuit Court of Appeal was entered on March 10, 1986, and petitioners timely applied to the Louisiana Supreme Court for writ of certiorari or review. The order of the Supreme Court of Louisiana denying petitioners' application for writ of certiorari or review was signed and entered on May 12, 1986.

The jurisdiction of this Honorable Court is envoked pursuant to 28 U.S.C. §1257(3), in that the refusal of the Louisiana appellate courts to recognize dismissal of foreign seamen's claims on the basis of *forum non conveniens* conflicts with, and is repugnant

to, the general maritime law doctrine of *forum non conveniens* established by the federal courts.

The Louisiana Court of Appeal essentially held that Louisiana Code of Civil Procedure Article 123 provides the only procedure for addressing the issue of *forum non conveniens* in Louisiana state court. La. Code Civ. P. art. 123 does not permit dismissal on the basis of *forum non conveniens* (it virtually is identical to 28 U.S.C. §1404[a]); rather, it contemplates only transfer to another district court within the state. Like 28 U.S.C. §1404(a), the Louisiana procedural article was not enacted to deal with the peculiar problem created by foreign maritime claimants seeking the benefit of our laws, and thus, it is the jurisprudentially created federal maritime doctrine of *forum non conveniens* which must be applied by both federal and state courts in maritime matters.

STATUTE INVOLVED

a. La. Code Civ. P. art. 123 provides as follows:

> For the convenience of the parties and the witnesses, in the interest of justice, a district court upon contradictory motion, or upon the court's own motion after contradictory hearing, may transfer a civil case to another district court where it might have been brought, provided, however, that no suit brought in the parish of which the plaintiff is domiciled, and which court is otherwise a court of competent jurisdiction and proper venue, shall be transferred to any other court pursuant to this article.

STATEMENT OF THE CASE

This litigation involves claims for the wrongful death of two Greek seamen serving aboard a Greek flag vessel, the M/V KONKAR RESOLUTE, which occurred while the vessel was in the Port of Leningrad, Russia.

Decedents were, and all plaintiffs are, citizens and residents of Greece.

The M/V KONKAR RESOLUTE is a Greek flag vessel owned by Konkar Resolute Corporation (KRC). KRC owns no vessels other than the M/V KONKAR RESOLUTE. KRC is a Liberian corporation which maintains its principal place of business in Greece. KRC maintains no offices within the United States, and all of its shareholders, officers and directors are Greek citizens who reside in Greece or Saudi Arabia. None of the shareholders, officers or directors of KRC are citizens or residents of the United States.

The M/V KONKAR RESOLUTE is managed by Konkar Shipping Agencies, S.A. (KSA). KSA is a Panamanian corporation which maintains its principal place of business in Greece. KSA maintains no offices within the United States, and all of its shareholders, officers and directors are Greek citizens who reside in Greece or Saudi Arabia. None of the shareholders, officers or directors of KSA are citizens or residents of the United States.

Arkon Shipping Agency, Inc. (ASA) is KSA's New York limited agent. ASA provided occasional bunkering arrangements for the M/V KONKAR RESOLUTE and assisted in certain charter negotiations; however, ASA had no authority to conclude such charters without specific approval of the vessel owner.

ASA is a New York corporation which maintains its principal place of business in New York. ASA had no ownership interest in, nor operational or managerial control over, the M/V KONKAR RESOLUTE or her crew.

Initially, plaintiffs filed suit in the U.S. District Court for the Southern District of New York, asserting claims under the Jones Act, 46 U.S.C. §688, and the general maritime law of the United States. After extensive discovery, defendants filed a motion to dismiss on the basis of *forum non conveniens*. Following the guidelines set forth by this Honorable Court and the lower federal courts, it was determined that the laws of the United States were not applicable to plaintiffs' claims and that the litigation should be dismissed on the basis of *forum non conveniens*. *Amalia Kassapas v. Arkon Shipping Agency, Inc.*, No. 82-6954 (S.D.N.Y 1984); Appendix, at 14a. That dismissal was upheld in an unreported decision of the United States Court of Appeals for the Second Circuit. *Amalia Kassapas v. Arkon Shipping Agency, Inc.*, No. 84-7196 (2nd Cir. 1984); Appendix, at 19a.

After dismissal, but while appeal in the New York litigation was pending, plaintiffs reasserted identical Jones Act and general maritime law claims in the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana. Plaintiffs sought and obtained a writ of attachment for the M/V KONKAR RESOLUTE pursuant to Article 3541 of the Louisiana Code of Civil Procedure, and thereafter, seized the vessel to obtain quasi in rem jurisdiction.

Defendants obtained release of the vessel by posting a $1,000,000.00 bond, and responded to plaintiffs' claims by timely filing exceptions of prescription, lack

of personal jurisdiction, lack of subject matter jurisdiction, improper venue and *forum non conveniens* under the maritime law.

On May 30, 1985, after extensive briefing and oral argument, the state trial court rendered its Reasons for Judgment and Judgment granting defendants' exception of *forum non conveniens* under the general maritime law. In finding for defendants, the trial court held in pertinent part as follows:

> This Court must look to Federal Law in order to rule on the exceptions. State Courts are given concurrent jurisdiction with Federal Courts of Maritime Cases (28 U.S.C.A. 1333).
>
> The District Courts shall have original jurisdiction, exclusive of the Courts of the States, of:
>
> (I) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.
>
> This Court must apply the same law as would have been applied had this suit been brought in Federal Court. Additionally, this Court should reach the same result as would a Federal Court.
>
> Considering the facts of the instant case, this Court applies the doctrine of *forum non conveniens* which requires that this suit be dismissed.

Amalia Kassapas v. Arkon Shipping Agency, Inc., No. 293-195, slip op. at 2-3 (La. 24th J.D.C. 1985); Appendix, at 11a-12a.

In accordance with the applicable federal jurisprudence, the trial court conditionally dismissed plaintiffs' claims, setting out requirements to be followed by defendants should plaintiffs institute litigation in Greece—the appropriate forum.

Plaintiffs timely appealed the dismissal of their claims by the trial court to the Louisiana Fifth Circuit Court of Appeal. Plaintiffs argued that the doctrine of *forum non conveniens* fashioned by the federal courts for dealing with the claims of foreign seamen is strictly procedural, and thus, is not required to be applied by a Louisiana state court hearing such claims brought under the Jones Act and general maritime law. Plaintiffs asserted that Louisiana procedure should apply in that instance, and that the Louisiana Code of Civil Procedure does not recognize dismissal on the basis of *forum non conveniens*; specifically, La. Code Civ. P. art. 123 permits only transfer of cases to other district courts within the state.

On March 10, 1986, after briefing and oral argument, the Louisiana Fifth Circuit Court of Appeal vacated the dismissal by the trial court and remanded the case for further proceedings. Without addressing whether the need for uniformity in the maritime law required application of the federal maritime doctrine of *forum non conveniens*, and without considering the inevitable conflict of decision created between state and federal courts if that doctrine were not applied, the Court of Appeal held that *forum non conveniens* involves solely a procedural issue. By characterizing *forum non conveniens* as strictly procedural, the Court of Appeal then concerned itself solely with whether Louisiana procedural law recognizes dismissal on that

basis. Specifically, the Court of Appeal framed the issue and held as follows:

> The question before us is whether the district courts of our state may, absent statutory authorization, conditionally dismiss a suit on the ground of forum non conveniens. It is our opinion that they cannot, and this case is therefore remanded for further proceedings.
>
> . . . .
>
> We note initially that the device of forum non conveniens is procedural, *Missouri ex rel. Southern Ry Co. v. Mayfield*, 340 U.S. 1, 71 S.Ct. 1, 95 L.Ed 3 (1950). The question here is, therefore, whether this device forms a part of our procedural laws. . . . By acts 1970, No. 294, §1, the Legislature added what is now La. Code Civ. Pro. art. 123, to provide for forum non conveniens *transfer* from one district court to another. That article does not provide for transfer to a foreign forum, nor does it permit forum non conveniens dismissal.

Amalia Kassapas v. Arkon Shipping Agency, Inc., 485 So.2d 565, 566 (La. App. 5th Cir. 1986); Appendix, at 3a,5a-6a.

At no point was the maritime law of the United States given even a cursory discussion by the Court of Appeal.

On April 8, 1986, defendants timely applied for writ of certiorari or review to the Supreme Court of Louisiana. On May 12, 1986, that application was denied by a vote of 4 to 3, without written opinion. Appendix, at 1a.

Petitioners seek writ of certiorari to remedy the now present lack of uniformity and conflict of decision in the maritime law. This conflict has been created by the Louisiana appellate courts' refusal to recognize the doctrine of *forum non conveniens*, as fashioned and applied by this Honorable Court and other federal courts hearing maritime claims.

REASONS FOR ALLOWANCE OF THE WRIT

I. Must the general maritime law, as fashioned by Congress and the federal courts, be applied by a state court hearing a maritime claim pursuant to the "savings to suitors" clause found in 28 U.S.C. §1333? If so, can a Louisiana state court refuse to apply an essential feature of the general maritime law—the doctrine of *forum non conveniens*—and thereby destroy uniformity and create conflict between state and federal courts hearing identical maritime claims?

It has long been held that state and federal courts have concurrent jurisdiction over Jones Act and in personam maritime causes of action (28 U.S.C. §1333). However, a plaintiff's election to pursue those claims in state, as opposed to federal, court cannot be used as a vehicle for circumventing the governing federal maritime law. Although a permissible choice of forum is reserved to maritime plaintiffs in certain circumstances, the maritime law fashioned by the federal courts must control the adjudication of maritime claims in state court. *Offshore Logistics, Inc. v. Tallentire*, 54 U.S.L.W. 4745 (U.S. June 23, 1986), *rev'd*, 754 F.2d 1274 (5th Cir. 1985); *Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.*, 369 U.S. 355, 82 S.Ct. 780, 7 L.Ed.2d 798 (1962); *Pope and Talbot, Inc. v. Hawn*, 346 U.S. 406, 74 S.Ct. 202, 98 L.Ed.

143 (1953); *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 63 S.Ct. 246, 87 L.Ed. 239 (1942); *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 40 S.Ct. 438, 64 L.Ed. 834 (1920); *Chelentis v. Luckenback S.S. Co.*, 247 U.S. 372, 38 S.Ct. 501, 71 L.Ed. 1171 (1918); *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 37 S.Ct. 524, 61 L.Ed. 1086 (1917).

An integral feature of the general maritime law is the doctrine of dismissal on the basis of *forum non conveniens*. That doctrine has been applied in admiralty and maritime actions for well over a century, and was developed to allow courts to decline to exercise jurisdiction, along with otherwise proper venue, when certain "special circumstances" existed. *Perusahaan Umum Listrik Negara Pusat v. M/V TEL AVIV*, 711 F.2d 1231, 1234 (5th Cir. 1983), citing *The BELGENLAND*, 114 U.S. 355, 5 S.Ct. 860, 29 L.Ed. 152 (1885) and other authority.

As the shipping industry of the United States expanded, the "special circumstances" giving rise to an appropriate application of *forum non conveniens* became increasingly more apparent. Our courts soon became inundated with claims by foreign seamen seeking Jones Act and general maritime law remedies. In a great many of these claims—like those involved in the instant litigation—there was no connection with the United States, other than sporadic calls by a vessel or the fact that the seaman's counsel resided in the United States. Accordingly, the century old doctrine of *forum non conveniens* was called upon and refined by the federal courts to ease the growing problem presented by the influx of these claims.

When analyzing the claim of a foreign seaman brought under the Jones Act and general maritime law, the threshold determination which must be made is whether the laws of the United States should, in fact, apply. This entails application by the trial court of the detailed choice of law analysis set forth in *Lauritzen v. Larsen* , 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953) and *Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306, 90 S.Ct. 1731, 26 L.Ed.2d 252 (1970). *Azzopardi v. Ocean Drilling & Exploration Co.*, 742 F.2d 890 (5th Cir. 1984); *Fisher v. Agios Nicolaos V*, 628 F.2d 308 (5th Cir. 1980), *cert. denied, sub nom, Valmas Brothers Shipping, S.A. v. Fisher*, 454 U.S. 816, 102 S.Ct. 92, 70 L.Ed.2d 84 (1981).

Once the choice of law question is resolved, then the balancing test mandated by *Gulf Oil Corporation v. Gilbert*, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947), and its progeny, is applied to determine whether the case should be dismissed in favor of a more appropriate forum.

This two-step analysis, which has been outlined and tailored by this Honorable Court and the lower federal courts, is the standard to be applied when reviewing the claims of foreign seamen seeking the benefit of our laws. It is the standard of review which is to be applied by federal courts hearing such claims, and the maintenance of uniformity in the maritime law mandates its application to similar claims brought in state court. Clearly, its application is not something which should vary from state to state, or from state to federal court within the same state.

The trial court in the instant litigation closely adhered to the guidelines established by this Honorable Court and the lower federal courts. The need for

uniformity of decision between state and federal courts hearing maritime claims was recognized by the trial court which stated that it "must apply the same law as would have been applied had this suit been brought in Federal Court. . ." and "this Court should reach the same result as would a Federal Court." *Amalia Kassapas v. Arkon Shipping Agency, Inc.*, No. 293-195, slip op. at 3 (La. 24th J.D.C. 1985); Appendix, at 11a-12a. After closely following the *Lauritzen, Rhoditis and Gilbert* analysis, the trial court dismissed plaintiffs' claims in favor of Greece—the appropriate forum.

Unfortunately, the Louisiana Fifth Circuit Court of Appeal chose to ignore the need for uniformity in maritime matters, which the Constitution and this Honorable Court have long mandated and jealously guarded. *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 40 S.Ct. 438, 64 L.Ed. 834 (1920). In fact, the opinion of the Court of Appeal does not so much as mention the issue of uniformity or how its decision might establish conflicting rules of law for state and federal courts hearing identical maritime claims. In sum, the Court of Appeal characterized the doctrine of *forum non conveniens* as being strictly procedural, and held that it is not recognized in Louisiana beyond the narrow scope of La. Code Civ. P. art. 123. That article, which virtually is identical to 28 U.S.C. §1404(a), is a change of venue statute which permits transfer of a case only to another district court within Louisiana. Turning its back on the jurisprudentially created federal doctrine, which has been refined over the years to deal with foreign seamen claims, the Court of Appeal vacated the judgment of the trial court and remanded the case for further proceedings.

Thereafter, defendants petitioned the Louisiana Supreme Court for writ of certiorari or review; however, that application was denied by 4 to 3 vote, without written opinion.

Federal maritime law, not state law, governs the course of a maritime claim filed in state court, even as to procedural matters, where the state procedure affects, redefines or limits the maritime remedy. *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 79 S.Ct. 406, 3 L.Ed.2d 550 (1959); *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 74 S.Ct. 202, 98 L.Ed. 143 (1953); *Garrett v. Moore-McCormack Co., Inc.*, 317 U.S. 239, 63 S.Ct. 246, 87 L.Ed. 238 (1942); *Powell v. Offshore Navigation, Inc.*, 644 F.2d 1063, 1065, n.5 (5th Cir.), *cert. denied*, 454 U.S. 972, 102 S.Ct. 521, 78 L.Ed.2d 391 (1981); *St. Hilaire Moye v. Henderson*, 496 F.2d 973, 980 (8th Cir.), *cert. denied*, 419 U.S. 884, 95 S.Ct. 151, 42 L.Ed.2d 125 (1974); *Gercey v. United States*, 409 F.Supp. 946, 949 (D.R.I.), *aff'ed*, 540 F.2d 536 (1st Cir. 1976), *cert. denied*, 430 U.S. 954, 97 S.Ct. 1599, 51 L.Ed.2d 804 (1977).

Clearly, the doctrine of *forum non conveniens* as it relates to foreign seamen claims is not a procedural device which should give way to state venue rules. Rather, it involves a detailed choice of law analysis which clearly affects the substantive rights of the litigants. Determining whether United States law should even apply to plaintiffs' claims is the first step mandated by this Honorable Court in the *forum non conveniens* analysis. This choice of law analysis is inextricably tied to the balancing of factors for dismissal on the basis of *forum non conveniens*. It is a two-step process which is peculiar to the analysis of

foreign seamen claims, and which has become an integral feature of the federal maritime law.

The importance of uniformity in the maritime law requires that all courts, state and federal, follow a single, consistent approach to adjudicating maritime claims. Accordingly, state statutes which work material prejudice to a characteristic feature of the maritime law, or interfere with the proper harmony and uniformity of the maritime law and its effect on international and interstate relations, must give way to the maritime law established by the federal courts. *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 37 S.Ct. 524, 61 L.Ed. 1086 (1917).

CONCLUSION

Petitioners respectfully submit that this Honorable Court should grant review of the Louisiana appellate courts' decisions, vacate their judgments and uphold the judgment of the trial court. The decisions of the appellate courts conflict with an integral feature of the general maritime law of the United States, and they establish an impermissable conflict between state and federal courts hearing maritime claims.

A situation is created in which a foreign seaman's claim brought in federal court could be dismissed under the *Lauritzen/Rhoditis/Gilbert* analysis, but the identical claim brought in Louisiana state court could not similarly be dismissed, regardless of whether the choice of law analysis indicated that United States law was inapplicable. Clearly, this destroys the uniformity of decision in the maritime law that is mandated by the Constitution, and jealously guarded by this Honorable Court. Further, this conflict in application of the maritime law impedes the freedom of navigation between the States and with foreign coun-

tries. As the law of Louisiana presently stands, the right of a defendant vessel owner to assert the doctrine of *forum non conveniens* under the general maritime law is dictated solely by whether plaintiff chooses to sue in federal or Louisiana state court. The tact of a claimant in choosing his forum should not be allowed to displace an essential feature and right provided by the general maritime law. The doctrine of *forum non conveniens* is an important judicial response to the possible misuse by claimants in selecting forums. Without that doctrine, an open door policy "may admit those who seek not merely justice, but perhaps justice blended with some harassment." *Gilbert*, 330 U.S. at 507.

Respectfully submitted,

GERARD T. GELPI
Counsel of Record
ROBERT P. MCCLESKEY, JR.
And
GELPI, SULLIVAN, CARROLL & LABORDE
430 Notre Dame Street
New Orleans, LA 70130
Telephone: 524-9714
Attorneys for Petitioners

APPENDIX

The Supreme Court of the State of Louisiana

NO. 86-C - 0659

AMALIA KASSAPAS, INDIVIDUALLY AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GEORGIOS KASSAPAS, AND AS TUTRIX OF THE ESTATES OF THE MINOR CHILDREN, NIKOLAS KASSAPAS AND CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSPAS; GEORGIOUS LAMBOU, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ANDREAS LAMBOU, VASILIKI LAMBOU; SOFIA LAMBOU; AND VASILIKI LAMBOU

VS.

ARKON SHIPPING AGENCY, INC., KONKAR SHIPPING AGENCIES, S.A., AND KONKAR RESOLUTE CORP.

IN RE: Arkon Shipping Agency Inc.; Konkar Shipping Agencies S.A.; Konkar Resolute Corp.; Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Fifth Circuit, Number 85-CA-652; Parish of Jefferson 24th Judicial District Court Div. "N" Number 293,195

May 12, 1986

Denied.

JAD

PFC

JLD

JCW

MARCUS, BLANCHE & LEMMON, J.J., would grant the writ.

Supreme Court of Louisiana
May 12, 1986
/s/ Name Illegible
Clerk of Court
For the Court

FIFTH CIRCUIT
COURT OF APPEAL
STATE OF LOUISIANA

NO. 85-CA-652

AMALIA KASSAPAS, INDIVIDUALLY AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GEORGIOS KASSAPAS, AND AS TUTRIX OF THE ESTATES OF THE MINOR CHILDREN, NIKOLAS KASSAPAS AND CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSPAS; GOEGIOUS LAMBOU, INDIVISUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ANDREAS LAMBOU, VASILIKI LAMBOU; SOFIA LAMBOU; AND VASILIKI LAMBOU

VERSUS

ARKON SHIPPING AGENCY, INC., KONKAR SHIPPING AGENCIES, S.A., AND KONKAR RESOLUTE CORPORATION

Appeal From The Twenty-Fourth Judicial District Court For The Parish Of Jefferson, No. 293-195, Division "N", Honorable James L. Cannella, Judge
EDWARD A. DUFRESNE, JR.
JUDGE

MAR 10 1986
(Court composed of Judges John C. Boutall, Thomas C. Wicker, Jr. and Edward A. Dufresne, Jr.)

LEON SARPY
1500 First N.B.C. Building
New Orleans, La. 70112

C. JOHN CASKEY, For Plaintiff-Appellant
PAUL H. DUE'
One Maritime Plaza
Government St. at Miss. River
Baton Rouge, La. 70802

ROBERT P. MCCLESKEY, JR., for Defendant-Appellee
GERARD T. GELPI
430 Notre Dame St.
New Orleans, La. 70130

JUDGMENT VACATED, MATTER REMANDED FOR FURTHER PROCEEDING.

The question before us is whether the district courts of our state may, absent statutory authorization, conditionally dismiss a suit on the ground of forum non conveniens. It is our opinion that they cannot, and this case is therefore remanded for further proceedings.

FACTS

The pertinent facts are not in dispute. Plaintiffs are the survivors of two seamen, Georgios Kassapas and Adreas Lambou, who died in an accident aboard the M/V Konkar Resolute. The deaths occurred on May 29, 1980, while the vessel was in the port of Leningrad, U.S.S.R. All parties plaintiff are residents and citizens of Greece, as were the decedents.

The M/V Konkar Resolute is a Greek flag vessel. It is the sole asset of Konkar Resolute Corporation, defendant, a Liberian corporation with its principal place of business in Monrovia, Liberia. All directors, officers and share-

holders of this corporation are citizens of Greece and residents of Greece or Saudi Arabia. None of these people are, or have ever been residents or citizens of the United States and the corporation has no office in this country. It does, however, maintain a bank account in New York.

Also made defendant is Konkar Shipping Agencies, S. A., a Panamanian corporation with its principal place of business in Greece. All directors, officers, and stockholders are Greek citizens residing in Greece or Saudi Arabia, none are, or have ever been residents or citizens of the United States and there is no corporate office in this country. It is responsible for fixing charters, routing the vessel when not chartered, and hiring and paying the ship's crew.

The third defendant is Arkon Shipping Agency, Inc., a New York corporation, with no ownership interest in the M/V Konkar Resolute. It negotiated charters for the vessel, but had no authority to conclude such charters without approval by the vessel owners. It did, however, have authority to write checks on the vessel owner's bank account in New York for routine expenses of the vessel, and to make bunkering arrangements for the vessel when it was not under charter.

At the time of the accident the vessel was under charter to a Panamanian corporation which is not a party to this suit.

COURSE OF PROCEEDINGS

A suit based on the accident and seeking relief under the Jones Act, 46 U.S.C. 688, and general maritime law, was filed in the United States District Court, Southern District of New York. In a memorandum opinion of February 8, 1984, that court dismissed the action on the ground of forum non conveniens, noting that the defendant shipowner had agreed to appear and defend the suit in Greece, and to waive any defenses based on statutes of limitations or laches. This dismissal was affirmed in an

unpublished opinion of May 23, 1984, by the United States Court of Appeals for the Second Circuit.

It appears that while the federal proceeding was pending in the court of appeals, plaintiffs learned that the vessel was within Jefferson Parish. On March 16, 1984, they commenced the present action, again urging claims based on the Jones Act and general maritime law, and noting that both the "saving to suitors" clause, 28 U.S.C. 1333(1), and the Jones Act, 28 U.S.C. 688, permit such actions in state courts. Relying on La. Code Civ. Pro. arts. 9, 3541, and 3542, they had the vessel attached. The owners posted a one million dollar bond, and the vessel was released.

The defendants filed exceptions of prescription, lack of personal jurisdiction, lack of subject matter jurisdiction, improper venue, vagueness, and forum non conveniens. They did not urge the exceptions of res judicata or lis pendens. After a hearing on the exceptions the trial court dismissed the action on the ground of forum non conveniens.[1] Because of this disposition of the case, he declared the remaining exceptions moot. Plaintiffs now appeal.

We note initially that the device of forum non conveniens is procedural, *Missouri ex rel. Southern Ry Co. v. Mayfield,* 340 U.S.1, 71 S.Ct. 1, 95 L.Ed. 3 (1950). The question here is, therefore, whether this device forms a part of our procedural laws. In *Trahan v. Phoenix Ins. Co.,* 200 So.2d 118 (La. App. 1st Cir. 1967), our brethren concluded that the common law doctrine of forum non conveniens was not provided for in our laws, and that were a court to sanction this device, it would be usurpring legislative authority. We also point out that the issue before the *Trahan* court was whether a case would be *transferred* from one state district court to another. By acts 1970, No. 294, § 1, the Legislature added what is now La. Code Civ. Pro. art. 123, to provide for forum non con-

[1] See appendix for copy of the judgment.

veniens *transfer* from one district court to another. That article does not provide for transfer to a foreign forum, nor does it permit forum non conveniens dismissal. In this court's opinion, the *Trahan* holding that the common law or federal doctrine of forum non conveniens does not exist in our laws is still viable, except to the limited extent that art. 123 authorizes transfer from one district court to another within the State of Louisiana.

We find further support for our opinion in that as far as we can determine, only in child custody matters are our courts empowered to conditionally dismiss or transfer cases to foreign jurisdictions, and these procedures are specifically authorized by La. R.S. 13:1706. Other than in such custody proceedings, we find no case, and none are cited by the parties, where a Louisiana court has conditionally dismissed a case or transferred it to a foreign forum on the ground of forum non conveniens.

We are aware of *Smith v. Glove Indemnity Co.*, 243 So.2d 882 (La. App. 1st Cir. 1971), and *Symeonides v. Cosmar Compania Naviera,* 433 So.2d 281 (La. App. 1st Cir. 1983), both of which cases indicated in dicta that forum non conveniens, transfer or dismissal beyond the narrow confines of La. Code Civ. Pro. art. 123, might be available to our courts. However, neither case was dismissed or transferred, and we do not find in those opinions a rule of law contrary to our conclusion here.

We therefore hold that the trial court erred in conditionally dismissing this case on the ground of forum non conveneins. To rule otherwise would, as noted in *Trahan v. Phoenix Ins. Co., supra,* "constitute judicial legislation of the rankest sort" (at 122).

We finally note that the remaining exceptions of the defendants have not yet been ruled on by the trial court, and we therefore remand the case for judgment on those exceptions, and all further proceedings consistent with this opinion.

JUDGMENT VACATED,
MATTER REMANDED FOR
FURTHER PROCEEDINGS.

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 293-195

DIV. "N"

AMALIA KASSAPAS, individually, and as personal representative of the Estate of GEORGIOS KASSAPAS, and as tutrix of the Estates of the minor children, NIKOLAS KASSAPAS and CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSAPAS; GEORGIOUS LAMBOU, individually, and as personal representative of the Estate of ANDREAS LAMBOU, VASILIKI LAMBOU; SOFIA LAMBOU and VASILIKI LAMBOU

VERSUS

ARKON SHIPPING AGENCY, INC., KONKAR SHIPPING AGENCIES, S.A. and KONKAR RESOLUTE CORP.,

FILED: May 30, 1985 Name Illegible

JUDGMENT

This matter came for a hearing on the 11th day of January, 1985, on Exceptions of Vagueness, Lack of Personal Jurisdiction, Lack of Subject Matter Jurisdiction, Im-

proper Venue, *Forum Non Conveniens* and Vagueness filed by defendants, Arkon Shipping Agency, Inc., *et als,* against plaintiffs, Amalia Kassapas, *et als.*

PRESENT: PAUL H. DUE
Attorney for plaintiffs,
Amalia Kassapas, *et als;* and

ROBERT J. MCCLESKEY, JR.
Attorney for defendants,
Arkon Shipping Agency, Inc.,
et als.

Considering the pleadings, the law, the evidence, the argument and memoranda of counsel,

IT IS ORDERED, ADJUDGED AND DECREED, that the Exception of *Forum Non Conveniens* filed by defendants, Arkon Shipping Agency, Inc., *et als,* against plaintiffs, Amalia Kassapass, *et als,* be, and the same is hereby GRANTED;

A TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE.
/s/ Name Illegible
DEPUTY CLERK
24TH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, LA.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that there be judgment herein in favor of defendants, Arkon Shipping Agency, Inc., *et als,* and against plaintiffs, Amalia Kassapas, *et als,* dismissing plaintiffs' Petition for Damages and for Writ of Attachment, with prejudice, and at plaintiffs' cost, provided that plaintiffs file suit in Greece against defendants within ninety (90) days of dismissal and defendants must meet the following conditions:

(1) in the Greek proceeding, defendants shall submit to service of process and jurisdiction;

(2) in the Greek proceeding, defendants shall formally waive any statute of limitations defense that has matured since the commencement of this action in the 24th Judicial District Court of the State of Louisiana;

(3) in the Greek proceeding, defendants shall formally agree to make available therein all relevant witnesses and documents within their control;

(4) in the Greek proceeding, defendants shall formally agree to satisfy any final judgment rendered by the Court; and

(5) should defendants fail to promptly meet any of these conditions, the Court shall resume jurisdiction over this case.

The other exceptions filed by defendants are, therefore, MOOT.

GRETNA, LOUISIANA, THIS 30TH DAY OF MAY, 1985.

/s/ James L. Cannella
JUDGE

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON STATE OF LOUISIANA

NO. 293-195

DIV. "N"

AMALIA KASSAPAS, individually, and as personal representative of the Estate of GEORGIOS KASSAPAS, and as tutrix of the Estates of the minor children, NIKOLAS KASSAPAS and CONSTANTINOS KASSAPAS; DESPINA

KASSAPAS; CONSTANTINOS KASSAPAS; GEORGIOUS LAMBOU, individually, and as personal representative of the Estate of ANDREAS LAMBOU, VASILIKI LAMBOU; SOFIA LAMBOU and VASILIKI LAMBOU

VERSUS

ARKON SHIPPING AGENCY, INC., KONKAR SHIPPING AGENCIES, S.A. and KONKAR RESOLUTE CORP.

FILED: May 30, 1985 /s/ Name Illegible

REASONS FOR JUDGMENT

STATEMENT OF THE CASE:

This case arises out of an accident on a Greek vessel in Leningrad, Russia, in which two seamen were killed.

FINDINGS OF FACT:

Plaintiffs allege that on May 29, 1980, Georgios Kassapas and Andreas Lambou, two Greek seamen, hereinafter referred to as "decedents", were employed by Konkar Resolute Corporation and worked on the M/V Konkar Resolute. They were docked in Leningrad, Russia. A quantity of the chemical Malathion was in the storage holds of the vessel. Noxious fumes were emitted. Some seamen were overcome by the fumes and both decedents climbed into a hold in an attempt to rescue them. Decedents collapsed and died from inhalation of the fumes.

On March 16, 1984, plaintiffs, survivors of decedents, filed a Petition for Damages and for Writ of Attachment in this Court. Shortly thereafter, the M/V Konkar Resolute was seized while within Jefferson Parish, Louisiana. Defendants claimed the vessel and posted with the Clerk of Court a $1,000,000.00 bond to effect the release of the vessel. The plaintiffs seek damages under the Jones Act (46 U.S.C. 688) and general maritime law.

The defendants filed numerous Peremptory, Declinatory and Dilatory Exceptions to the plaintiffs' petition and attachment. These exceptions relate to:

(1) prescription;

(2) lack of personal jurisdiction;

(3) lack of subject matter jurisdiction;

(4) improper venue;

(5) *forum non conveniens;* and

(6) vagueness.

Konkar Resolute Corp. is a Liberian Corporation. Its office and principal place of business is in Monrovia, Liberia. All directors, officers and shareholders are citizens of Greece and residents of Saudi, Arabia or Greece. Defendants, Konkar Resolute Corp., owned the M/V Resolute. Said vessel is the sole asset of the corporation. Between 1977 and 1985, the vessel called in Louisiana approximately five times. Defendant, Konkar Shipping Agencies, S.A., is a Panamanian Corporation. Its office and principal place of business is in Greece. All shareholders, officers and directors are citizens of Greece and residents of Saudi, Arabia or Greece. Defendant, Arkon Shipping Agencies, Inc., is a New York Corporation, with no ownership interest in Konkar Resolute. They negotiated United States Charters for the M/V Konkar Resolute, with approval from Konkar Shipping Agencies, S.A.

This Court must look to Federal Law in order to rule on the exceptions. State Courts are given concurrent jurisdiction with Federal Courts of Maritime Cases (28 U.S.C.A. 1333).

The District Courts shall have original jurisdiction, exclusive of the Courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

This Court must apply the same law as would have been applied had this suit been brought in Federal Court. Ad-

ditionally, this Court should reach the same result as would a Federal Court.

Considering the facts of the instant case, this Court applies the doctrine of *forum non conveniens* which requires that this suit be dismissed.

There are twelve factors a Court must consider in determining the *forum non conveniens* issue. The case of *Lauritzen v. Larsen,* 45 U.S. 571, 73 S.Ct. 921, 97 L. Ed. 1254 (1953) enumerated seven factors:

(1) the place of the wrongful act;

(2) the law of the flag;

(3) the allegiance of the domicile of the injured;

(4) the allegiance of the defendants' ship owner;

(5) the place of the contract;

(6) the inaccessibility of the foreign forum; and

(7) the law of the forum.

The case of *Hellenic Lines, Ltd. v. Rhoditis,* 398 U.S. 306, 90 S.Ct. 1731, 26 L.Ed 252 (1970) enumerated an eighth factor; namely, the ship owner's place of operations. Said Court further noted that the above test was neither exhaustive nor to be applied mechanically. The case of *Fisher v. Agius Nicolaos Vessel, et al,* 628 F.2d 308 (5 Cir. 1980) enumerated a ninth factor; namely, the choice of law. The case of *Gulf Oil Corporation v. Gilbert,* 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947), enumerated three additional factors; namely, accessibility of proof and witnesses, the enforceability of any resulting judgment and the ease and expense of litigation in the forum.

This Court considered the *Lauritzen, Rhoditis, Fisher* and *Gulf Oil* cases and the tests resulting therefrom as controlling.

The only defendant with any United States contacts is Arkon Shipping Agencies, Inc. It had a very limited busi-

ness relationship with the other defendants. The only contacts the vessel has with the United States are intermittent calls here and its seizure in Jefferson Parish. The evidence is overwhelming that justice would best be served if this case were transferred to a Court in Greece where defendants, through counsel, have submitted to that jurisdiction.

Accordingly, the Motion to Dismiss on the grounds of *forum non conveniens* is hereby granted, with prejudice, provided that plaintiffs file suit in Greece against defendants within ninety (90) days of dismissal and defendants' meet the following conditions:

(1) in the Greek proceeding, defendants shall submit to service of process and jurisdiction;

(2) in the Greek proceeding, defendants shall formally waive any statute of limitations defense that has matured since the commencement of this action in the 24th Judicial District Court of the State of Louisiana;

(3) in the Greek proceeding, defendants shall formally agree to make available therein all relevant witnesses and documents within their control;

(4) in the Greek proceeding, defendants shall formally agree to satisfy any final judgment rendered by the Court;

(5) should defendants fail to promptly meet any of these conditions, the Court shall resume jurisdiction over this case.

Since this action is dismissed on the grounds of *Forum Non Conveniens,* it is unnecessary for this Court to address the other exceptions filed by defendants.

GRETNA, LOUISIANA, THIS 30th DAY OF MAY, 1985.

/s/ James L. Cannella
JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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82 Civ. 6954 (MP)

AMALIA KASSAPAS, individually and as personal representative of GEORGIOS KASSAPAS, deceased; NIKOLAS KASSAPAS and CONSTANTINOS KASSAPAS, minors, by their mother, AMALIA KASSAPAS; DESPINA KASSAPAS and CONSTANTINOS KASSAPAS; GEORGIOS LAMBOU, individually and as personal representative of ANDREAS LAMBOU, deceased; VASILIKI LAMBOU, SOFIA LAMBOU and VASILIKI LAMBOU,

Plaintiffs,

v.

ARKON SHIPPING AGENCY, INC., KONKAR SHIPPING AGENCIES, S.A., and KONKAR RESOLUTE CORP.,

Defendants

MEMORANDUM AND ORDER

APPEARANCES:

KREINDLER & KRIENDLER
Attorneys for Plaintiffs
99 Park Avenue
New York, NY 10016
By: Paul S. Edelman

HEALY & BAILLEY
Attorneys for Defendants
29 Broadway
New York, NY 10006
By: John R. Geraghty

MILTON POLLACK, Senior United States District Judge

MEMORANDUM

AMALIA KASSAPAS, et al. v. ARKON SHIPPING AGENCY, INC., et al., 82 Civ. 6954 (MP)

This is an action brought under the Jones Act, 46 U.S.C. § 688 and under the general maritime law of the United States to recover damages for the alleged wrongful death of two Greek seamen. Defendants have brought a motion seeking, *inter alia,* dismissal of this action on the ground of *forum non convenians,* pursuant to Fed.R.Civ.P 12. For the reasons to be set forth below, this Court shall grant that motion.

Plaintiffs are the personal representatives, heirs and dependents of two Greek seamen who died of apparent asphyxiation aboard the M/V KONKAR RESOLUTE on May 29, 1980. All plaintiffs herein are citizens and residents of Greece. The alleged wrongful deaths of which plaintiffs complain occured while the vessel was in Soviet waters.

Defendant Konkar Resolute Corp., the owner of the vessel, is a Liberian corporation having its principal place of business in Greece. All shareholders, officers and directors of the corporation are Greek citizens, and are residents of either Greece or Saudi Arabia. The vessel itself is of Greek registry and was chartered by a Panamanian corporation at the time the two seamen died. Charter fees were paid by charterer into a bank account maintained by the shipowner in New York.

Defendant Konkar Shipping Agencies, S.A., managed the M/V KONKAR RESOLUTE on behalf of the shipowner. Konkar Shipping Agencies was responsible for fixing charters, routing the vessel when not chartered, provisioning the vessel and hiring and paying the wages of the ship's crew. Konkar Shipping Agencies is a Greek corporation, with its principal place of business in Greece.

Its shareholders, officers and directors are Greek citizens, and are residents of either Greece or Saudi Arabia.

Defendant Arkon Shipping Agency, Inc. is a New York agent of Konkar Shipping Agencies. Arkon assisted in the negotiation of charters for the M/V KONKAR RESOLUTE in New York, and executed charters it negotiated on behalf of Konkar Shipping Agencies. All charter arrangements, however, had to be approved by Konkar Shipping Agencies. Arkon, moreover, was empowered to withdraw funds from Konkar Resolute Corporation's New York bank account to pay routine expenses for the vessel and to make bunkering arrangements for the ship when it was not under charter.

Defendant shipowner has agreed to appear and defend any wrongful death action plaintiffs might bring in Greece, and to waive any defenses based on statutes of limitations or laches if plaintiffs bring an action in Greece within thirty days of dismissal of this action.

In *Koupetoris v. Konkar Intrepid Corp.*, 402 F.Supp. 951, 953 (S.D.N.Y. 1975) (Pollack, J.), *aff'd*, 535 F.2d 1392 (2d Cir. 1976), this Court held that a New York forum was not a convenient forum for the assertion of a Jones Act/general maritime law action similar to the one now at bar. *Koupetoris* was an action brought by a Greek seamen for injuries sustained aboard a vessel anchored in an American harbor. The defendants were the shipowner (a Liberian corporation with a principal place of business in Greece) and a New York corporation, which, as the shipowner's agent, performed duties in New York of a broader scope than those performed by defendant Arkon in the instant case. (The New York agent in *Koupetoris* performed provisioning and crewing functions performed by the Greek vessel manager in the instant case.) All shareholders of the shipowner in *Koupetoris* were Greek citizens and residents; the vessel itself flew the Greek flag. Finally, the shipowner made itself amenable to suit in

Greece in the event of the dismissal of the action pending in this Court.

If anything, this Court is a less suitable forum for the maintenance of the instant case than it was for the assertion of the *Koupetoris* action. The injuries complained of herein occured, not in U.S. waters, but in the port of Leningrad. The New York agent of the shipowner in the instant case had narrower duties than those of the *Koupetoris* New York agent. In short, *Koupetoris* compels dismissal of this action.

Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306 (1970), cited by the plaintiffs, is factually irrelevant to the instant situation. In *Rhoditis,* the *ship operator* had its largest office in New York and a second office in New Orleans, and the injury occured in American (not as here, in Soviet) waters.

This action is dismissed on the ground of *forum non conveniens.*

SO ORDERED.

February 8, 1984

Milton Pollack
Senior United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New-York, on the 23rd day of May one thousand nine hundred and eighty-four.

Present: HONORABLE HENRY J. FRIENDLY,
HONORABLE THOMAS J. MESKILL,
HONORABLE AMALYA L. KEARSE,
Circuit Judges.

Docket No. 84-7196

AMALIA KASSAPAS, individually and as personal representative of GEORGIOS KASSAPAS, deceased, NIKOLAS KASSAPAS and CONSTANTINOS KASSAPAS, minors, by their MOTHER, AMALIA KASSAPAS, DESPINA KASSAPAS and CONSTANTINOS KASSAPAS, GEORGIOUS LAMBOU, individually and as personal representative of ANDREAS LAMBOU, deceased, VASILIKI LAMBOU, SOFIA LAMBOU, and VASILIKI LAMBOU,

Plaintiffs-Appellants,

v.

ARKON SHIPPING AGENCY, INC., KONKAR SHIPPING AGENCIES, S.A., and KONKAR RESOLUTE CORP.,

Defendants-Appellees.

Appeal from a judgment of the United States District Court for the Southern District of New York, Pollack, *J.*

This matter came on to be heard on the transcript of record from said district court and was argued by counsel.

Defendants' contacts with the United States are far too insubstantial to make one of them an "employer" subject

to the provisions of the Jones Act. *See Koupetoris* v. *Konkar Intrepid Corp.*, 535 F.2d 1392, 1396 (2d Cir. 1976). Furthermore, the district court did not abuse its broad discretion in determining that the United States would be an inappropriate forum for this action.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of the district court is affirmed substantially for the reasons spelled out in Judge Pollack's memorandum of decision below.

/s/ Henry J. Friendly
Henry J. Friendly, U.S.C.J.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

/s/ Thomas J. Neskill
Thomas J. Neskill, U.S.C.J.

/s/ Amalya L. Kearse
Amalya L. Kearse, U.S.C.J.

Supreme Court, U.S.
FILED
OCT 7 1986
JOSEPH F. SPANIOL, JR.
CLERK

Number 86-195

In The
Supreme Court of the United States

OCTOBER TERM, 1986

ARKON SHIPPING AGENCY, INC., KONKAR SHIPPING AGENCIES, S.A., AND KONKAR RESOLUTE CORPORATION,
Petitioners,

VERSUS

AMELIA KASSAPAS, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GEORGIOS KASSAPAS, AND AS TUTRIX OF THE ESTATES OF THE MINOR CHILDREN, NIKOLAS KASSAPAS AND CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSAPAS; GEORGIOUS LAMBOU, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ANDREAS LAMBOU; VASILIKI LAMBOU; SOFIA LAMBOU; AND VASILIKI LAMBOU,
Respondents.

Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of the State of Louisiana

PAUL H. DUÉ
Counsel of Record
5555 Hilton Avenue, 5th Floor
Baton Rouge, LA 70808
Telephone: 504 927-1064
Attorney for Respondents

QUESTION PRESENTED

Is a state court, hearing a Jones Act and general maritime claim pursuant to the "savings to suitors" clause contained in 28 U.S.C. sec. 1333, able to apply its own rule with respect to *forum non conveniens* as it could if it were hearing a claim under the Federal Employers' Liability Act?

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Number 86-195

In The
Supreme Court of the United States

OCTOBER TERM, 1986

ARKON SHIPPING AGENCY, INC., KONKAR SHIPPING AGENCIES, S.A., AND KONKAR RESOLUTE CORPORATION,
Petitioners,

VERSUS

AMELIA KASSAPAS, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GEORGIOS KASSAPAS, AND AS TUTRIX OF THE ESTATES OF THE MINOR CHILDREN, NIKOLAS KASSAPAS AND CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSAPAS; GEORGIOUS LAMBOU, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ANDREAS LAMBOU; VASILIKI LAMBOU; SOFIA LAMBOU; AND VASILIKI LAMBOU,
Respondents.

Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of the State of Louisiana

May It Please The Court:

CORRECTIONS TO STATEMENT OF THE CASE

Undersigned counsel respectfully disagrees with the statement made by counsel for petitioners that "it was determined that the laws of the United States were not applicable to plaintiffs' claims" (Petition for Certiorari, p.

5) by the federal district court in New York. On the contrary, the memorandum opinion (Appendix, pp. 16a et seq.) contains only traditional *forum non conveniens* analysis and no definitive choice of law analysis or holding demonstrating inapplicability of United States law. Similarly, the unreported opinion of the United States Court of Appeals for the Second Circuit (Appendix, pp. 19a, 20a) only states that defendants' contacts with the United States were too insubstantial to make one of them an employer subject to the provisions of the Jones Act. No consideration was given to applicability of American general maritime law, particularly with respect to the unseaworthiness wrongful death action, including consideration of the fact that Liberian law makes the non-statutory law (and thus general maritime law of unseaworthiness) of the United States of America the law of Liberia,* and the concomitant fact that the ship owner, which would be legally responsible for unseaworthiness, was at all pertinent times a Liberian Corporation. Undersigned counsel also respectfully disagrees with the statement made by counsel for petitioners that Konkar Resolute Corporation "maintains its principal place of business in Greece." (Petition for Certiorari, p. 4) The Louisiana trial judge in the instant case, on the contrary, stated that the ship owner's "office and principal place of business is in Monrovia, Liberia." (Appendix, p. 11a)

**See San Pedro Compania Armadoras v. Yannacopoulos*, 357 F.2d 737, 740 n. 2 (5th Cir. 1966). See also *Perez v. OMNIUM TRADER*, 174 F. Supp. 876 (E.D.La. 1959); *Karros v. S/S LIRYC*, 247 F. Supp. 554 (E.D.Va. 1965) and *Flores v. Central American Steamship Agency, Inc.*, 594 F. Supp. 735 (S.D.N.Y. 1984).

SUMMARY OF ARGUMENT

The principle of uniformity is no different in general maritime or Jones Act litigation than it is in FELA litigation. In both situations the general rule is that the substantive federal law must be followed by the state court hearing either type case under the saving to suitors clause, but as to matters of procedure, the state court is able to follow its own procedural statutes and requirements. While this Court has previously recognized the difficulty of classifying a particular issue as one of substance versus procedure, with respect to the specific issue herein, namely, the question of applicability of the doctrine of *forum non conveniens*, this Court has previously definitively ruled that *forum non conveniens* is not part of the federal substantive FELA remedy, with the result that a state court is free to apply its own rule with respect to *forum non conveniens*. The same rationale ought to be applied to the instant Jones Act and unseaworthiness cause of action and the petition for certiorari accordingly ought to be denied.

ARGUMENT

The principle of uniformity, so heavily espoused by proponents for certiorari herein, is no different in Jones Act or admiralty claims than it is in FELA claims. Such was made perfectly clear by this Court in *Garrett v. Moore-McCormack Company*, 317 U.S. 239, 244, 63 S.Ct. 246, 250, 87 L.Ed. 239, 243 (1942), one of the cases on which defense counsel so heavily relies concerning uniformity:

"This Court has specifically held that the Jones Act

> is to have a uniform application throughout the country unaffected by 'local view of common law rules.' Panama R. Co. v. Johnson, 264 U.S. 375, 392, 44 S.Ct. 391, 396, 68 L.Ed. 748. The Act is based upon and incorporates by reference the Federal Employers' Liability Act, 45 U.S.C.A. sec. 51 et seq., which also requires uniform interpretation. Second Employers Liability Cases (Mondou v. New York, New Haven & Hartford Railroad Co.), 223 U.S. U.S. 1, 55 et seq., 32 S.Ct. 169, 177, 56 L.Ed. 327, 38, 38 L.R.A., N.S., 44."

While counsel for proponents for certiorari argue that the federal doctrine of *forum non conveniens* is substantive rather than procedural, said counsel have not attempted to distinguish or explain away this Court's decision in *Missouri ex rel. Southern Railway Company v. Mayfield*, 340 U.S. 1, 4, 5, 71 S.Ct. 1, 3, 95 L.Ed. 3, 8 (1950), specifically relied upon by the Louisiana Court of Appeal for the Fifth Circuit in the instant case, which expressly held that the doctrine of *forum non conveniens* is not part of the substantive FELA remedy, and, instead, any state court hearing a FELA case under the saving to suitors clause is free to apply its own *forum non conveniens* rule or lack thereof:

> ". . . Whether a State makes such a choice is, like its acceptance or rejection of the doctrine of *forum non conveniens*, a question of State law not open to review here."

***

> "Therefore, if the Supreme Court of Missouri held as it did because it felt under compulsion of federal law as enunciated by this Court so to hold, it should be relieved of that compulsion. It should be

> freed to decide the availability of the principle of *forum non conveniens* in these suits according to its own local law."

Mayfield, of course, came just three years after *Gulf Oil Corporation v. Gilbert*, 330 U.S. 501, 67 S. Ct. 838, 91 L.Ed. 1055 (1947), the seminal case recognizing a federal common law *forum non conveniens* doctrine. Thus, after having recognized the doctrine, this Court characterized it as procedural in nature, not substantive, and hence not binding upon state courts, which are instead free to apply their own doctrine of *forum non conveniens* or lack thereof.

The federal court in *Norfolk and Western Railway Company v. Beatty*, 400 F. Supp. 234 (S.D. Ill. 1975), aff'd, 423 U.S. 1009, 96 S.Ct. 439, 46 L.Ed.2d 381 (1975), held that the aforementioned pronouncement by this Court is equally applicable to Jones Act cases tried in state court as it is to FELA cases tried in state court:

> "Since state rules on *forum non conveniens* govern in F.E.L.A. and Jones Act matters, by analogy state procedure should control here. *Missouri ex rel. Southern Railway v. Mayfield*, 340 U.S. 1, 71 S.Ct. 1 (1950)," (*Id.* at 237.)

Since there is no difference in the principle of uniformity between FELA cases tried in state court on the one hand and Jones Act and general maritime law cases tried in state court on the other hand, *Garrett, supra*, the holding by this Court in *Mayfield, supra*, concerning *forum non conveniens* should be equally applicable and dispositive in the instant case.

Any remaining doubt concerning the procedural ver-

sus substantive nature of *forum non conveniens* should have been put to rest by the recent decision of the United States Court of Appeals for the Eleventh Circuit in *Sibaja v. Dow Chemical Company*, 757 F.2d 1215 (11th Cir. 1985). Holding that a federal court in a diversity case is not obligated by the *Erie* doctrine to apply *forum non conveniens* law, the *Sibaja* court linked *forum non conveniens* to a court's "inherent power" to control its own docket (*Id.* at 1218); the Court stated that *forum non conveniens* is "a rule of venue, not a rule of decision," that it is a matter "completely apart from any application of . . . substantive law." (*Id.* at 1219.) This Court unanimously denied certiorari, _____ U.S. _____, 106 S.Ct. 347, 88 L.Ed.2d 294 (1985).

Confronted with the jurisprudence clearly demonstrating that *forum non conveniens* is obviously procedural only and not substantive, counsel for proponents for certiorari argue from broad assertions of policy, asserting a need for uniformity in the American maritime law. This argument is almost completely beside the point, inasmuch as it is widely conceded that there is absolutely no uniformity in the federal court's reactions to *forum non conveniens* pleas in maritime and other cases. See Stein, *Forum Non Conveniens and the Redundancy of Court-Access Doctrine*, 133 U.Pa.L.Rev. 781, 831-40 (1985); Bickel, *The Doctrine of Forum Non Conveniens as Applied in the Federal Courts in Matters of Admiralty*, 35 Cornell L. Q. 12 (1949). The federal *forum non conveniens* jurisprudence has been aptly described as "notoriously complex and uncertain," with no predictability or uniformity at all. Currie, *Change of Venue and the Con-*

flict of Laws, 22 U. Chicago L. Rev. 405, 416 (1955). Thus, it is inconceivable that *following the law*—which plainly characterizes *forum non conveniens* as a procedural rule of venue and therefore governed by the law of the forum (*see, e.g., Sibaja, supra*)—could offend any meaningful uniformity goal.

Had *Fisher v. AGIOS NICOLAOS V*, 628 F.2d 308 (5th Cir. 1980), *cert. denied, sub nom Valmas Brothers Shipping, S.A. v. Fisher*, 454 U.S. 816, 102 S.Ct. 92, 70 L.Ed.2d 84 (1981), arisen in New York rather than in Beaumont, for example, one can candidly state that in all likelihood it would have suffered *forum non conveniens* dismissal in the federal trial court and that decision would again likely have been affirmed as not constituting an abuse of discretion, *cf. Koupetoris v. Konkar Intrepid Corp.*, 402 F.Supp. 951, 953 (S.D.N.Y. 1975), aff'd, 535 F.2d 1392 (2d Cir. 1976)—thus illustrating the disparity of result even in the federal judicial system depending upon the vagaries of geography.

This Court has previously recognized that a state is free to adopt remedies and procedures to apply to admiralty matters, in supplementation of the federal admiralty law, even where the admiralty court would not be able to accord a similar remedy. In *Red Cross Line v. Atlantic Fruit Company*, 264 U.S. 109, 44 S.Ct. 274, 68 L.Ed.582 (1924), for example, this Court, in holding the New York arbitration law specific performance requirements available and enforceable with respect to maritime contracts, even though a federal court in admiralty could not then have granted specific performance, stated that the right of a common law remedy, saved to suitors, does

include all means which may be employed to enforce the right or to redress the injury involved and that a state, having concurrent jurisdiction, is free to adopt such remedies and to attach to them such incidents, as it sees fit.

That is all that has happened in the instant case. Louisiana has seen fit to open its courts to litigants over whom it has requisite jurisdiction and has not seen fit to empower its courts to decline such jurisdiction under the doctrine of *forum non conveniens*.

Even when the matter at issue was properly characterized as substantive rather than procedural, this Court has still permitted applicability of the state remedy in supplementation of the existing admiralty remedy. In *Just v. Chambers*, 312 U.S. 383, 392, 61 S.Ct. 687, 693, 85 L.Ed. 903, 909 (1941), for example, this Court, in recognizing the Florida state survival rule, enunciated the following in response to the ship owner's plea of violation of admiralty uniformity:

> "Our decisions in the wrongful death cases also meet the further argument which is addressed to lack of uniformity. For whatever lack of uniformity there may be in giving effect to the state rule as to survival is equally present when the state rule is applied to wrongful death, or, for that matter, in any case when state legislation is upheld in its dealing with local concerns in the absence of federal legislation. Uniformity is required only when the essential features of an exclusive federal jurisdiction are involved. But as admiralty takes cognizance of maritime torts, there is no repugnancy to its characteristic features either in permitting recovery for wrongful death or in allowing compensation for a wrong to the living to be obtained from the tort-feasor's estate."

CONCLUSION

Since a state's "acceptance or rejection of the doctrine of *forum non conveniens* [is] a question of State law not open to review here," *Mayfield, supra*, certiorari should be denied.

Respectfully submitted:

PAUL H. DUÉ
5555 Hilton Avenue, 5th Floor
Baton Rouge, LA 70808
Telephone: 504 927-1064

Attorney for Respondents

CERTIFICATE

I CERTIFY that three copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of the State of Louisiana, have been mailed, postage prepaid, properly addressed, to:

Gerard T. Gelpi
Gelpi, Sullivan, Carroll & Laborde
430 Notre Dame Street
New Orleans, LA 70130

John C. McHose
Lillick, McHose & Charles
725 South Figueroa Street
Los Angeles, CA 90017

J. Dwight LeBlanc, Jr.
Chaffe, McCall, Phillips, Toler & Sarpy
1500 First NBC Building
New Orleans, LA 70112

Baton Rouge, Louisiana, this 7th day of October, 1986.

Paul H. Dué

PAUL H. DUÉ

Supreme Court, U.S.
FILED
OCT 23 1986
JOSEPH F. SPANIOL,
CLERK

(5)

No. 86-195

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ARKON SHIPPING AGENCY, INC., KONKAR SHIPPING AGENCIES, S.A. AND KONKAR RESOLUTE CORPORATION,
Petitioners,

v.

AMALIA KASSAPAS, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GEORGIOS KASSAPAS, AND AS TUTRIX OF THE ESTATES OF THE MINOR CHILDREN, NIKOLAS KASSAPAS AND CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSAPAS; GEORGIOUS LAMBOU, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ANDREAS LAMBOU; VASILIKI LAMBOU; SOFIA LAMBOU; AND VASILIKI LAMBOU,
Respondents.

PETITIONERS' REPLY BRIEF

GERARD T. GELPI
Counsel of Record
ROBERT P. MCCLESKEY, JR.
GELPI, SULLIVAN, CARROLL AND LABORDE
430 Notre Dame Street
New Orleans, LA 70130
(504) 524-9714

Counsel for Petitioners

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

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IN THE

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Respondents.

PETITIONERS' REPLY BRIEF

ARGUMENT

In respondents' brief they make certain preliminary assertions which they term "corrections" to the Statement Of The Case set forth at pages 4 through 8 of the petition for writ of certiorari. The first of these "corrections" evidences respondents' confusion as to the special application of *forum non conveniens* in

foreign seamen claims and in a maritime setting. The refusal to recognize the difference between the doctrine of *forum non conveniens*, which is akin to simple change of venue (like 28 U.S.C. §1404[a]), and the doctrine as applied in maritime and foreign seamen claims, is the core of the dispute before this Honorable Court.

Respondents argue that the federal district court in New York and the United States Court of Appeals for the Second Circuit did not determine that the laws of the United States were inapplicable to plaintiffs' claims. Respondents attempt to support this statement by pointing out that the opinions of those courts contain "only traditional *forum non conveniens* analysis and no definitive choice of law analysis or holding demonstrating inapplicability of United States law." (Brief in opposition, at 2). From this statement it appears respondents admit that the doctrine of *forum non conveniens* as applied in maritime and foreign seamen claims is different and more complex than the "traditional *forum non conveniens* analysis." This is precisely the position urged by petitioners. As this Honorable Court has long held, a detailed choice of law analysis is the first step in determining the propriety of dismissing a foreign seaman's claim on the basis of *forum non conveniens*. *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953); *Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306, 90 S.Ct. 1731, 26 L.Ed.2d 252 (1970). Once that choice of law question is resolved, then the balancing test mandated by *Gulf Oil Corporation v. Gilbert*, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947), and its progeny, is applied to determine whether the case should be dismissed in favor of a more appropriate forum.

Although the choice of law analysis was not specifically outlined in the opinions of the New York courts, the outcome of that choice of law analysis is implicit in their holdings. The New York federal district court cited *Koupetoris v. Konkar Intrepid Corp.*, 402 F.Supp. 951 (S.D. NY 1975), *aff'd*, 535 F.2d 1392 (2nd Cir. 1976) as the appropriate analysis which it followed (Appendix, at 17a and 18a). *Koupetoris* applied the mandated choice of law analysis and determined that neither the Jones Act nor the general maritime law of the United States was applicable to plaintiff's claims. The Court of Appeals for the Second Circuit affirmed the analysis of the district court, and also cited *Koupetoris* (Appendix, at 19a and 20a). The choice of law analysis outlined by this Honorable Court for resolving the plea of *forum non conveniens* in foreign seamen claims was followed by the New York courts and the Louisiana trial court, as this matter involves much more than simply a transfer of litigation when it is clear United States law will apply.

Fueled by loose jurisprudential language which fails to distinguish between the various applications of *forum non conveniens*, respondents argue that foreign seamen claims should be treated just as FELA and other claims insofar as the doctrine of "*forum non conveniens*" is concerned. In support of their position, respondents rely heavily upon the decision in *Missouri ex. rel. Southern Railway Company v. Mayfield*, 340 U.S. 1, 71 S.Ct. 1, 95 L.Ed. 3 (1950). Even a cursory reading of *Mayfield* reveals that it did not address the issue presented by the instant litigation. The doctrine of *forum non conveniens* as it relates to foreign seamen claims clearly is distinguishable and vastly more extensive than the very limited issue presented

sented in *Mayfield*—whether a FELA cause of action could be brought in Missouri state court by a plaintiff who was not a resident of Missouri. There was never any question as to whether FELA, or any other law of the United States, was applicable. In foreign seamen claims, such as those scrutinized by *Lauritzen, Rhoditis* and their progeny, the core issue is whether or not U.S. law and the Jones Act should even apply. This is an analysis which is peculiar to the admiralty and maritime law and its treatment of *forum non conveniens*. This issue was never addressed in *Mayfield*. Unlike foreign seamen claims, *Mayfield* never had to decide whether FELA, as opposed to the law of a foreign sovereign, was applicable.

Respondents next cite *Norfolk and Western Railway Company v. Beatty*, 400 F.Supp. 234 (S.D. Ill. 1975), *aff'd*, 423 U.S. 1009, 96 S.Ct. 439, 46 L.Ed.2d 381 (1975), for the proposition that *Mayfield* "held" that state rules on *forum non conveniens* govern FELA and Jones Act matters. This is not the holding of either *Beatty* or *Mayfield*. The language quoted from *Beatty* is nothing more than dicta which misconstrues the *Mayfield* decision. Neither *Mayfield* nor *Beatty* stand for the proposition that a state is free to reject the long established doctrine of *forum non conveniens* as it relates to choice of law and the treatment of maritime and foreign seamen claims. Such a rejection would fly in the face of our courts' efforts to preserve uniformity in maritime matters.

Respondents end their opposition by citing *Red Cross Line v. Atlantic Fruit Company*, 264 U.S. 109, 44 S.Ct. 274, 68 L.Ed. 582 (1924) and *Just v. Chambers*, 312 U.S. 383, 61 S.Ct. 687, 85 L.Ed. 903 (1941) for the proposition that uniformity of decision in mar-

itime matters is not of grave importance and should not be a factor in the instant litigation. However, both *Red Cross* and *Chambers* recognize, and do not alter, the long established rule that restricts a state from taking any action to "contravene any acts of Congress, nor work any prejudice to the characteristic features of the maritime law, nor interfere with its proper harmony and uniformity in its international and interstate relations." *Chambers*, 312 U.S. at 389.

CONCLUSION

Much of the problem encountered throughout the course of the instant litigation stems from the fact that the term "*forum non conveniens*" has been used very loosely in the jurisprudence and by respondents. The term has been used to describe the change of venue provision contained in 28 U.S.C. §1404(a), as well as the more extensive doctrine which has been fashioned to apply to foreign seamen claims. This is evidenced by the fact that the law review article, Currie, "Change of Venue and the Conflict of Laws," 22 U.Chicago L.Rev. 405, 415 (1955), cited at pages 6 and 7 of respondents' opposition deals with §1404(a) and not the doctrine of *forum non conveniens* which is applied to claims involving foreign seamen. Because of this inconsistency, cases exist which can be cited for the proposition that "*forum non conveniens*" is a matter for the states to apply, or not apply, as they see fit. However, these cases, like *Mayfield* and *Beatty*, do not deal with foreign seamen claims or the detailed *Lauritzen/Rhoditis/Gilbert* analysis. Clearly, *Lauritzen/Rhoditis/Gilbert* use the term "*forum non conveniens*" to encompass more than a venue determination. *Forum non conveniens* as discussed by

Lauritzen/Rhoditis/Gilbert involves a detailed choice of law analysis which has been fashioned by the federal courts and must be applied by the state courts hearing foreign seamen claims. It is an analysis which has become a characteristic feature of the maritime law, and which properly was applied by the Louisiana trial court. Failure of the Louisiana appellate court to uphold the trial court's application of that doctrine establishes an impermissible conflict between state and federal courts hearing identical maritime claims.

Respectfully submitted,

GERARD T. GELPI
Counsel of Record
ROBERT P. MCCLESKEY, JR.
GELPI, SULLIVAN, CARROLL
AND LABORDE
430 Notre Dame Street
New Orleans, LA 70130
Telephone: (504) 524-9714

Attorneys for Petitioners

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ARKON SHIPPING AGENCY, INC., ET AL.,
Petitioners,

versus

AMALIA KASSAPAS, ET AL.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
FOR THE STATE OF LOUISIANA

BRIEF OF INTERNATIONAL SHIPPING FEDERATION AND INTERNATIONAL CHAMBER OF SHIPPING, AS AMICI CURIAE

J. DWIGHT LEBLANC, JR.
Counsel of Record
KENNETH J. SERVAY
Chaffe, McCall, Phillips,
Toler & Sarpy
1500 First NBC Building
New Orleans, Louisiana 70112
Telephone: (504) 568-1320

ATTORNEYS FOR AMICI
CURIAE, INTERNATIONAL
SHIPPING FEDERATION and
INTERNATIONAL CHAMBER
OF SHIPPING

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986
No. 86-195

ARKON SHIPPING AGENCY, INC.
KONKAR SHIPPING AGENCIES, S.A.
AND KONKAR RESOLUTE CORPORATION
Petitioners

versus

AMALIA KASSAPAS, individually and as personal representative of the estate of Georgios Kassapas, and as tutrix of the estates of the minor children, NIKOLAS KASSAPAS and CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSAPAS; GEORGIOUS LAMBOU, individually and as personal representative of the estate of ANDREAS LAMBOU; VASILIKI LAMBOU; SOFIA LAMBOU; and VASILIKI LAMBOU
Respondents

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI OF AMICI CURIAE, INTERNATIONAL SHIPPING FEDERATION AND INTERNATIONAL CHAMBER OF SHIPPING

The International Shipping Federation (hereinafter "ISF") and the International Chamber of Shipping (hereinafter "ICS") file this brief as amici curiae with the consent of the parties.[1]

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1 Letters expressing such consent are on file with the Clerk of Court.

I.

Interest of the International Shipping Federation and the International Chamber of Shipping As Amici Curiae

ISF is an international organization, consisting of representatives from twenty-eight nations, including the United States, vitally interested in international maritime affairs, particularly as such affairs relate to shipowners and seamen.

ICS is an organization of national shipowners' associations with representatives from thirty-three nations, vitally interested in the development of maritime statutory and jurisprudential law.

ISF and ICS have participated in this case as amici curiae before the Louisiana Supreme Court and before the Louisiana Court of Appeal, Fifth Circuit.

Participation by ISF and ICS as amici curiae will assist the Court, as ISF and ICS, international shipping organizations, present the views of their members in matters of importance to the international shipping community.

Presented in this case is the important question whether a state court, hearing an admiralty and maritime case, is required to apply the choice of law factors, set forth by this Court in *Lauritzen v. Larsen*, 345 U.S. 571 (1953), and *Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306 (1970), together with the doctrine of *forum non conveniens* as developed by the maritime law, in determining whether to maintain jurisdiction over a maritime action involving foreign parties. This question is of international importance, affecting the rights and liabilities of shipowners world-wide. The ruling of the Louisiana courts below, refusing to apply the

maritime doctrine of *forum non conveniens*, destroys uniformity in the maritime law and leaves shipowners subject to the unfairness of trial in the United States, often under United States law, as to causes of action having no relationship to the United States, thereby provoking international conflict.

IFS and ICF adhere to the position set forth by Petitioners, but set forth the following additional considerations in support of the petition for writ of certiorari.

II.

Factual and Procedural Background

Decedents, two Greek seamen, served aboard the Greek flag M/V KONKAR RESOLUTE. The accident giving rise to their deaths occurred while the vessel was in the Port of Leningrad, U.S.S.R. The vessel is owned by a Liberian corporation having its principal place of business in Greece; all of the shipowning corporation's officers and directors are Greek citizens who reside in Greece or Saudi Arabia. No United States citizen or resident is a shareholder, officer, or director of the shipowning company. The M/V KONKAR RESOLUTE is managed by a Panamanian corporation which maintains its principal office in Greece. None of the officers, directors, or shareholders of the managing corporation are United States citizens or residents. The vessel has a limited-purpose agent in the United States, which assists in arranging bunkers and in some charter negotiations; however, this New York agent has no authority to bind the owners to charters without specific approval of the vessel owner; it has no ownership interests in the vessel.

This case, in and of itself, involves a direct conflict between the rulings of a state and a federal court, justify-

ing the issuance of a writ of certiorari. Plaintiffs, citizens and residents of Greece (as were the decedents), filed suit in the United States District Court for the Southern District of New York. That court dismissed plaintiffs' claims under the maritime doctrine of *forum non conveniens. Amalia Kassapas v. Arkon Shipping Agency, Inc.*, No. 82-6954 (S.D.N.Y. 1984); Petitioners' Appendix at 14a. The United States Court of Appeals for the Second Circuit affirmed. *Amalia Kassapas v. Arkon Shipping Agency*, No. 84-7196 (2d Cir. 1984); Petitioners' Appendix at 19a.

Before the Second Circuit had decided the appeal, plaintiffs' filed suit in the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana.

The state district court, following the lead of the federal courts, ordered dismissal for *forum non conveniens. Amalia Kassapas v. Arkon Shipping Agency, Inc.*, No 293-195 (La. 24th J.D.C. 1985); Petitioners' Appendix at 11a. However, the Louisiana Court of Appeal, Fifth Circuit, reversed. Despite the extensive argument presented to that court by Petitioners and amici curiae concerning the applicability of the maritime doctrine of *forum non conveniens*, the Louisiana Fifth Circuit did not discuss the doctrine; rather, it held the state district court in error because the Louisiana Code of Civil Procedure did not recognize the doctrine. *Amalia Kassapas v. Arkon Shipping Agency, Inc.*, 485 So.2d 565 (La. App. 5th Cir. 1985); Petitioners' Appendix at 3a. The Louisiana Supreme Court denied Petitioners' writ application without an opinion by a 4-3 vote. 488 So.2d 403 (La. 1986); see Petitioners' Appendix at 1a.

III.

Summary of Argument

The maritime decisions of this Court have stressed the need for uniformity in decisions, whether a claim is brought in federal or state court. This Court has held on several occasions that the rights and liabilities of parties to a maritime action are governed by the substantive admiralty and maritime law, whether plaintiff files suit in federal or state court. This Court has further stressed that maritime procedural law applies both in federal court and in state court, particularly where the procedure affects the substantive rights of the parties. The decisions of the Louisiana appellate court below, refusing to apply established maritime choice of law and *forum non conveniens* principles to determine whether dismissal would be appropriate, is inconsistent with the uniformity of decision in maritime cases that the jurisprudence of this Court has strived to obtain. This Court should grant a writ of certiorari to resolve the conflict between the decision of the Louisiana appellate court and the jurisprudence of this Court, as resolution of this conflict is important to the uniformity of the maritime law.

At least one federal court has stated specifically that maritime *forum non coveniens* questions are governed by maritime law, whether plaintiff brings his action "in admiralty" or "at law." Consistent with this case, numerous federal cases have held that Jones Act claims, which are essentially cases "at law," are subject to maritime choice of law and *forum non conveniens* principles, whether plaintiff invokes federal admiralty jurisdiction or brings his claim "at law." The decision of the Louisiana appellate court is inconsistent with this established federal jurisprudence; it refuses to apply maritime *forum non conveniens*

principles to a Jones Act claim brought "at law." This Court should grant a writ of certiorari to resolve this conflict between the decision below and established maritime jurisprudence.

Also, this Court should grant a writ of certiorari because the aberration by the Louisiana appellate court from the established maritime choice of law and *forum non conveniens* principles is of the utmost importance to international shipping and commerce. The ruling of the court below, if allowed to stand, will subject shipowners to the individual laws of each state, rather than to one national uniform maritime law, regarding the important questions of choice of law and *forum non conveniens*. Thus state courts, such as the Louisiana appellate court, will be free to ignore maritime *forum non conveniens* law, even though a case (such as this case) may have no rational connection to the United States. Plaintiffs thereby are encouraged to forum shop. Shipowners are required to defend suits, at great expense and inconvenience, and often at the expense of justice, in jurisdictions with no rational relation to the dispute in question. Such a result is inconsistent with the recognition, as a matter of international comity, that other maritime nations with more relation to the dispute are better able to resolve the dispute. Also, international comity is fostered by restricting expansive U.S. doctrines of maritime tort liability to cases in which the United States has some substantial interest. Decisions like the one below strain international relations and encourage the courts of other nations to adjudicate American disputes even when the adjudicating nation has no interest.

The decision below is contrary to uniformity in the maritime law, international comity, and harmony in international commerce. This Court should grant a writ of certiorari to decide the important questions and conflicts

raised by the decision of the Louisiana appellate courts below.

IV.

Argument

A. A Writ of Certiorari Should Be Granted Because the Decision Below Is Inconsistent With Decisions of This Court Requiring Uniformity of Decision in the Maritime Law, Whether Suit Is Filed in Federal or State Court

Numerous decisions of this Court have set forth the principle that admiralty and maritime actions are governed by the same uniform body of law, whether the action is filed in federal court under federal admiralty jurisdiction (28 U.S.C. § 1333), or in federal or state court "at law" as preserved by the "Saving to Suitors" clause.[2] *See, e.g., Offshore Logistics, Inc. v. Tallentire*, 106 S.Ct. 2485, 91 L.Ed.2d 174 (1986); *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625 (1959); *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406 (1953). This Court's decisions have required federal and state uniformity not only of

---

2 28 U.S.C. § 1333 provides in pertinent part:

> **§ 1333. Admiralty, maritime and prize cases.**
>
> The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, *saving to suitors* in all cases other remedies to which they are otherwise entitled. (emphasis supplied)

substantive maritime law, but also of maritime procedural law where it affects the substantive rights of the parties. *See Garrett v. Moore-McCormack Co., Inc.*, 317 U.S. 239 (1942), (maritime rule on the burden of proof governing the validity of releases preempted state procedural rule on the subject); *Pope & Talbot, Inc. v. Hawn, supra*, (state procedural rule of contributory negligence was preempted by maritime doctrine of comparative negligence); *Kermarec v. Compagnie Generale Transatlantique, supra*, (maritime law applied in a case brought "at law" pursuant to federal diversity jurisdiction). Thus, in maritime cases, all matters affecting the rights of the parties are governed by maritime law, regardless of the court where the action is filed.

The decision of the Louisiana appellate court is inconsistent with this uniformity. Although sitting in an admiralty and maritime matter, it refused to apply well-established maritime *forum non conveniens* principles to this case.

This case demonstrates the lack of uniformity resulting when a state court refuses to abide by established maritime law. Plaintiffs initially filed their action in federal court in the Southern District of New York. Under established maritime choice of law and *forum non conveniens* principles, the federal court found that Greek law applied and that the case had no contacts with the United States. The case appropriately was dismissed for *forum non conveniens*. The same case then was filed in state court in Louisiana, where the state appellate court reversed the trial court, holding that the case could not be dismissed; it refused to consider application of the maritime *forum non conveniens* principles, finding that the Louisiana Code of Civil Procedure did not recognize the law of *forum non conveniens*. The holding of the Louisiana appellate court, essentially, is that the maritime law of *forum non conveniens* is not binding on state courts hearing an admiralty or mari-

time case. Thus, the state court placed its own state law above established admiralty and maritime law.

The conflict and lack of uniformity promoted by the state court's decision warrant the issuance of a writ of certiorari in this case. Under the decision of the Louisiana court, the question whether a maritime case should be tried in the United States (and, as in this case, whether a state court can dimiss a case), and the related question of what law applies to the case, are subject to varying interpretations of state law in each state jurisdiction, rather than to the uniform body of rules established by this Court and the lower federal courts as an integral part of the admiralty and maritime law.

This Court should grant the writ of certiorari to resolve this important question of maritime law.

B. This Court Should Grant A Writ of Certiorari Because the Louisiana Appellate Court's Decision Is Inconsistent With Federal Decisions Requiring Application of Maritime Choice of Law and *Forum Non Conveniens* Principles, Even to Cases Brought "At Law" Pursuant to the "Saving to Suitors" Clause

At least one federal court explicitly has recognized that where federal maritime law governs plaintiff's maritime action brought "at law" pursuant to the "saving to suitors" clause, the maritime *forum non conveniens* principles, along with maritime substantive law, must be applied by the court sitting "at law." *Ali v. Offshore Co.*, 753 F.2d 1327, 1333 n.14 (5th Cir. 1985). In accordance with *Ali*, Jones

Act cases, which by their very nature are cases "at law,"[3] consistently have been held subject to maritime choice of law and *forum non conveniens* principles. *E.g.*, *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959); *Zouras v. Menelaus Shipping Co.*, 336 F.2d 209 (1st Cir. 1964), (court held that maritime *forum non conveniens* principles apply to Jones Act/general maritime law case, whether suit was brought on the admiralty or law side of the court); *Fitzgerald v. Texaco, Inc.*, 521 F.2d 448 (2d Cir. 1975), (maritime choice of law/*forum non conveniens*

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3 This Court has explained that a Jones Act suit, which may be brought either "in admiralty" or "at law," when brought "in admiralty" introduces common law principles into the admiralty action. *Panama Railroad Co. v. Johnson*, 264 U.S. 375 (1924). The wording of the Jones Act also reveals its character as an action "at law." The Jones Act, 46 U.S.C. § 688, provides in pertinent part:

> **(a) Application of railway employee statutes; jurisdiction**
>
> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages *at law*, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages *at law* with the right of trial by jury and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. (emphasis supplied)

principles equally applicable to Jones Act and general maritime law actions); *DeMateos v. Texaco, Inc.*, 562 F.2d 895 (3rd Cir. 1977), *cert. denied sub non, Hapag-Lloyd, A.G. v. Texaco Panama, Inc.*, 423 U.S. 1052 (1976), (maritime choice of law/*forum non conveniens* principles found applicable to Jones Act/general maritime law case); *Vaz Borralho v. Keydril Co.*, 696 F.2d 379 (5th Cir. 1983), (the same choice of law/*forum non conveniens* factors apply to Jones Act claims as to a claims under the general maritime law); *Pereira v. Utah Transport, Inc.*, 764 F.2d 686 (9th Cir. 1985), (maritime choice of law/*forum non conveniens* factors applied to plaintiff's cause of action brought under the Jones Act); *Sigalas v. Lido Maritime, Inc.*, 764 F.2d 686 (11th Cir. 1985), *cert. dismissed*, 106 S.Ct. 1253, 89 L.Ed.2d 362 (1986), (maritime choice of law/*forum non conveniens* principles applied to plaintiff's action, brought under the Jones Act and the general maritime law).

The decision of the Louisiana court clearly is in conflict with this case law. Plaintiffs' choice in bringing their Jones Act/general maritime law claims in state court "at law" is no different than if plaintiffs had brought their claims "at law" in federal court. In either instance, the admiralty and maritime choice of law and *forum non conveniens* principles should apply.

Because the decision of the Louisiana court below is in conflict with established maritime law, this Court should grant a writ of certiorari.

C. A Writ of Certiorari Should Be Granted Because Uniform Application of Principles of Choice of Law and *Forum Non Conveniens* in Maritime Cases Is Important to International Maritime Commerce

Uniform application of choice of law and *forum non conveniens* principles is a matter of utmost importance to maritime commerce and the international maritime community. This Court has recognized that the nature of the shipping business involves ships coming into contact with a multitude of jurisdictions. *Lauritzen v. Larsen*, 345 U.S. at 581, 583. It is not in the interest of this nation to require shipowners to adjudicate causes of action in the United States where the cause of action has nothing to do with this country. Should state and local courts not be required to apply established maritime *forum non conveniens* principles, shipowners trading in the United States will be subject to the unfairness and uncertainty of different state law standards for determining choice of law and the availability of *forum non conveniens* dismissal, thus discouraging maritime commerce with the United States.

A shipowner is entitled to have fairly considered, under a uniform, federally established set of principles what law should be applied to the case and whether the case should be tried in the United States. If the Louisiana decision below is allowed to stand, plaintiffs can avoid the possibility of a foreign law applying, or of having the case dismissed, by simply filing suit in a jurisdiction like Louisiana where the courts would be free to ignore maritime *forum non conveniens* principles. Thus, shipowners are subject to the burden and expense of defending claims in the United States, like those involved in this litigation, which have nothing at all to do with the United States, and which clearly should be dismissed. The result is that shipowners are denied in state court the rights which federal maritime law has established in their favor.

This Court, in *Garrett v. Moore-McCormack Co., Inc.*, 317 U.S. 239 (1942), held that such inconsistencies could not be tolerated:

> If by its practice the state court were permitted substantially to alter the rights of either litigant, as those rights were established in federal law, the remedy afforded by the state would not enforce, but would actually deny, federal rights which Congress, by providing alternative remedies, intended to make not less, but more secure. The constant objective of legislation and jurisprudence is to assure litigants full protection for all substantive rights intended to be afforded them by the jurisdiction in which the right itself originates. Not so long ago we sought to achieve this result with respect to enforcement in the federal courts of rights created or governed by state law. And admiralty courts, when invoked to protect rights rooted in state law, endeavor to determine the issues in accordance with the substantive law of the State. So here, in trying this case the state court was bound to proceed in such a manner that all the substantial rights of the parties under controlling federal law would be protected.

Id., 317 U.S. at 245 (footnotes omitted).

The ruling of the Louisiana courts below fosters the injustice that this Court condemned in *Garrett*. Plaintiffs are given license, and, in fact, are invited to forum shop, while defendants are denied the benefit of the *forum non conveniens* principles established by the maritime law to guard against such forum shopping.

International considerations, such as promoting uniformity in the maritime decisional process in state and federal court, and, as a matter of international comity, limiting application of expansive concepts of American personal injury liability to those cases truly having substantial connections with the United States, are adversely affected by the ruling below. Recognition that the individual maritime nations of the world are competent to regulate their own shipping activities is important to international maritime harmony. The decision by the Louisiana appellate court below is inconsistent with that recognition.

Finally, the ruling below invites retaliation by the courts of other nations. This court stated in *Lauritzen v. Larsen*:

> It would not be candid to claim that our courts have arrived at satisfactory standards or apply those that they profess with perfect consistency. But in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application of our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction.

Id., 345 U.S. at 582.

This Court should grant a writ of certiorari because the Louisiana appellate court and the Louisiana Supreme Court ignored established maritime law designed to promote decision by United States courts of actions having a rational relation to the United States, while discouraging the prosecution of actions in the United States which have no such

rational relation. Refusal to grant a writ in this case, it is submitted, can only promote international disharmony which the maritime case law of this Court has strived to avoid.

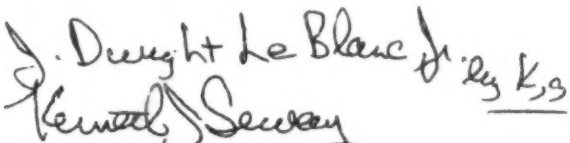
CONCLUSION

Questions of what law should apply to an international maritime dispute, and where the dispute should be resolved are not questions which should be subject to the laws of each individual state of the United States. The question presented by this case has far-reaching importance to international commerce and the uniformity of admiralty and maritime law. This Court and the lower federal courts have labored to establish uniform principles of choice of law and *forum non conveniens* which apply to all cases maritime in nature, whether the case is brought under federal admiralty jurisdiction, federal jurisdiction "at law," or state jurisdiction "at law." The decision by the Louisiana appellate court ignores this uniform law and fosters forum shopping and international discord.

The International Shipping Federation and the International Chamber of Shipping submit that the questions presented by Petitioners' writ application are of the utmost importance to international commerce and the international

shipping community; as amici curiae, they urge the Court to grant a writ of certiorari in this case.

Respectfully submitted,

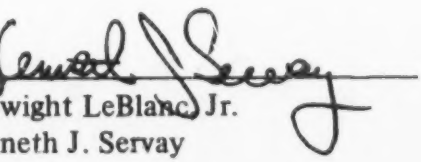


J. DWIGHT LeBLANC, JR.
Counsel of Record
KENNETH J. SERVAY
of
CHAFFE, McCALL, PHILLIPS,
TOLER & SARPY
1500 First NBC Building
New Orleans, Louisiana 70112
Telephone: (504) 568-1320
ATTORNEYS FOR AMICI CURIAE,
INTERNATIONAL SHIPPING FEDERATION
and
INTERNATIONAL CHAMBER OF SHIPPING

CERTIFICATE OF SERVICE

Undersigned counsel hereby certify that a copy of the above and foregoing Brief on behalf of Amici Curiae, International Shipping Federation and International Chamber of Shipping has been served upon counsel of record for Petitioners, Robert P. McGleskey, Jr., Esquire and Gerard T. Gelpi, Esquire of Gelpi, Sullivan, Carroll & LaBorde, 430 Notre Dame, New Orleans, Louisiana 70130, and upon counsel of record for Respondents, Paul H. Due', Esquire of Due', Anderson & Adams, 5555 Hilton Avenue, 5th Floor, Baton Rouge, Louisiana 70808, by depositing same in the United States mail, first-class postage affixed, on this 5th day of September, 1986.

CHAFFE, MC CALL, PHILLIPS,
TOLER & SARPY

By: 

J. Dwight LeBlanc, Jr.
Kenneth J. Servay

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No. 86-195

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1986

ARKON SHIPPING AGENCY, INC.,
KONKAR SHIPPING AGENCIES, S.A.,
AND KONKAR RESOLUTE CORPORATION,
Petitioners,

VS.

AMALIA KASSAPAS, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GEORGIOS KASSAPAS, AND AS TRUTRIX OF THE ESTATES OF THE MINOR CHILDREN, NICKOLAS KASSAPAS AND CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSAPAS; GEORGIOUS LAMBOU, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ANDREAS LAMBOU; AND VASILIKI LAMBOU,
Respondents.

MOTION TO FILE AMICUS CURIAE BRIEF AND BRIEF IN SUPPORT OF A PETITION FOR A WRIT OF CERTIORARI TO THE LOUISIANA FIFTH CIRCUIT COURT OF APPEAL

JOHN C. MCHOSE
Counsel of Record
FRANCIS J. O'BRIEN
RICHARD W. PALMER
MICHAEL MARKS COHEN
725 South Figueroa Street
Los Angeles, CA 90017
(213) 488-7100
Attorneys for the Maritime Law Association of the United States as Amicus Curiae

Bowne of Los Angeles, Inc., Law Printers (213) BOWNECO.

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Respondents.

MOTION TO FILE AMICUS CURIAE BRIEF AND BRIEF IN SUPPORT OF A PETITION FOR A WRIT OF CERTIORARI TO THE LOUISIANA FIFTH CIRCUIT COURT OF APPEAL

Applicant, The Maritime Law Association of the United States (MLA), moves the Court for permission to file an amicus curiae brief in support of the petition for writ of certiorari filed by Arkon Shipping Agency, Inc., Konkar Shipping Agencies, S.A., and Konkar Resolute Corporation. Petitioners have given consent, but consent, re-

quested by letter, ~~has not been received from Respondents and leave to file must be sought~~ refused.

Applicant has a very strong interest in the disposition of this case. The Maritime Law Association of the United States (MLA) is a nationwide bar association founded in 1899. It has a membership of more than 3564 attorneys, federal judges, law professors and others interested in maritime law. It is affiliated with the American Bar Association, and is represented in that Association's House of Delegates.

MLA's attorney members, most of whom are specialists in admiralty law, represent all maritime interests — shipowners, charterers, cargo owners, shippers, forwarders, port authorities, seamen, longshoremen, passengers, marine insurance underwriters and other maritime claimants and defendants.

MLA's purposes are stated in the Articles of Association:

> The objects of the Association shall be to advance reforms in the Maritime Law of the United States, to facilitate justice in its administration, to furnish a forum for the discussion and consideration of problems affecting the Maritime Law and its administration, and to act with foreign and other associations in efforts to bring about a greater harmony in the shipping laws, regulations and practices in different nations.

In furtherance of these objectives MLA, during the 87 years of its existence, has sponsored such federal maritime legislation as the Salvage Act (1912)[1], the Carriage of Goods by Sea Act (1936)[2], the Admiralty Extension

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[1] 46 U.S.C. §§ 727-31.

[2] 46 U.S.C. §§ 1300-15.

Act (1948)[3], and has cooperated with Congressional committees in the formulation of other maritime legislation including the Water Quality Improvement Act of 1970[4], the 1972 Water Pollution Control Act Amendments[5], the statutory implementation of the 1972 Convention for Preventing Collisions at Sea[6], the Federal Court Jurisdiction Bill[7], and the United States Inland Navigation Rules.[8]

MLA is participating in several projects of a maritime legal nature undertaken by agencies of the United Nations, including its Commission on Trade Law ("UNCITRAL") and Trade and Development ("UNCTAD"). It works closely with the International Maritime Organization (IMO).

From time to time MLA recommended improvements in the former General Admiralty Rules of the United States Supreme Court, and in the 1960's assisted the Court's Advisory Committee on Admiralty Rules in unification of the General Admiralty Rules and the Federal Rules of Civil Procedure. John McHose, Counsel of Record, was a member of that Advisory Committee.

MLA has actively participated, as one of some 45 national maritime law associations constituting the

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[3]46 U.S.C. § 740.

[4]33 U.S.C. §§ 1161-75.

[5]33 U.S.C. §§ 1251-1376.

[6]Text published by the Inter-Governmental Maritime Consultative Organization.

[7]S. 1876, 93rd Cong., 1st Sess.

[8]33 U.S.C. §§ 2001-73.

Comite Maritime International[9], in the movement to achieve maximum international uniformity in maritime law through the medium of international conventions, such as those relating to Assistance and Salvage (1910)[10], Ocean Bills of Lading (1924)[11], Collision (1910)[12], Limitation of Liability of Owners of Sea-Going Vessels (1957)[13], Maritime Liens and Mortgages (1968)[14], Civil Liability of Oil Pollution Damages (1969)[15] and Limitation of Liability for Maritime Claims[16].

MLA believes uniformity in maritime law, both national and international, is of great importance. Concern over a tendency of state and local legislation and regulations to encroach upon the maritime field prompted adoption, in 1975, of the following Resolution.

> RESOLVED, that the Maritime Law Association of the United States considers it of the utmost

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[9]These now include the national association of Argentine, Australia and New Zealand, Belgium, Brazil, Bulgaria, Canada, Chile, China, Columbia, Costa Rica, Czechoslovakia, Denmark, Egypt, Finland, France, Federal Republic of Germany (West Germany), Greece, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Mexico, Morocco, The Netherlands, Nigeria, Norway, Panama, Philippines, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States, Uruguay, Union of Soviet Socialist Republics, Venezuela, and Yugoslavia.

[10]37 Stat. 1658 (1913).

[11]51 Stat. 233 (1937).

[12]Knauth's Benedict on Admiralty 37 (7th ed., rev.) (hereinafter "Benedict").

[13]6A Benedict 634.

[14]Singh, International conventions of Merchant Shipping (2d Edition 1973).

[15]6A Benedict 951.

[16]1977 AMC 1607.

> importance and in the public interest that maritime law be uniform to the maximum extent possible throughout the United States; it is greatly concerned about, and strongly opposes the current poliferation of disparate state and local legislation adversely affecting such uniformity and advocates that Congress consider the matter and enact legislation designed to protect and maintain national uniformity in maritime law.

A substantially identical resolution was adopted by the American Bar Association at Atlanta in 1976.

MLA has, in furtherance of the uniformity policy and this resolution, filed amicus briefs in a number of cases, including three accepted by the United States Supreme Court.[17]

It is also the policy of MLA to file briefs as amicus curiae only when an important issue of maritime law is involved and the court's decision may substantially affect the uniformity of maritime law.

As stated, maintenance of uniformity in the administration and practice of maritime law throughout the United States is extremely important. No state law should be permitted to conflict with or be inconsistent with established federal maritime law.

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[17] *Askew v. American Waterways Operators,* 411 U.S. 325 (1973); *Ray v. Atlantic Richfield Co.,* 435 U.S. 151 (1978); *Air Logistics, Inc. v. Tallentire,* No. 85-202, 106 S. Ct. 2485 (1986).

This exact situation has been created in Louisiana by the Court of Appeal reversal of the conditional dismissal by the Judicial District Court which the Louisiana Supreme Court refused to review by a 4 to 3 vote. If not corrected it will result in a flood of quasi in rem attachments of ships in Louisiana in the effort to obtain more favorable jurisdiction which would be dismissed by federal courts and state courts which apply federal maritime law.

DATED: September 5, 1986.

Respectfully submitted,

JOHN C. MCHOSE
Counsel of Record
FRANCIS J. O'BRIEN
RICHARD W. PALMER
MICHAEL MARKS COHEN
725 South Figueroa Street
Los Angeles, California 90017
(213) 488-7100

Attorneys for the Maritime Law Association of the United States, as Amicus Curiae

No.

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Petitioners,

VS.

AMALIA KASSAPAS, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GEORGIOS KASSAPAS, AND AS TRUTRIX OF THE ESTATES OF THE MINOR CHILDREN, NICKOLAS KASSAPAS AND CONSTANTINOS KASSAPAS; DESPINA KASSAPAS; CONSTANTINOS KASSAPAS; GEORGIOUS LAMBOU, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ANDREAS LAMBOU; AND VASILIKI LAMBOU,
Respondents.

BRIEF IN SUPPORT OF THE ISSUANCE OF A WRIT OF CERTIORARI

The Maritime Law Association of the United States (MLA) respectfully submits this Brief as amicus curiae in support of the petition for Certiorari of Arkon Shipping Agency, Inc., Konkar Shipping Agencies, S.A., and Konkar Resolute Corporation.

QUESTION OF LAW PRESENTED

When state law provides for attachment of a ship quasi in rem to assert a maritime cause of action, but does not specifically provide for dismissal of a maritime case on the ground of forum non conveniens, conditioned upon acquiescence to suit in a convenient forum, may such state law govern a maritime case in which both a trial court in that state and a federal court in another state, applying established maritime law, have ordered such conditional dismissal?

INTEREST OF AMICUS CURIAE

This is stated in the Motion which precedes this Brief.

ARGUMENT

1. This Case Severely Threatens The Uniformity Of Maritime Law in The United States. It Presents An Important Question Of Federal Maritime Law Which Should Be Settled For Reasons Stated In The Pending Petition And Brief.

MLA believes Petitioner's Brief adequately states reasons why the Louisiana Fifth Circuit Court of appeal decision must be reversed. We see no need to reiterate or amplify those reasons but wish to emphasize why, to maintain uniformity, the error in allowing Louisiana law to govern this maritime case must be corrected.

The Constitution of the United States was clearly designed, in substantial part, to promote, and indeed require, national uniformity with respect to certain matters. One of these was most certainly maritime commerce, particularly occurrences beyond State territorial waters. The Supremacy Clause (Article VI, Section 8, Clause 2), the Commerce Clause (Article I, Section 8, Clause 3), the Admiralty Clause (Article III, Section 2, Clause 3), and the "Necessary and Proper Laws Clause" (Article I, Section 8, Clause 18) bear witness to this.

The Admiralty Clause, and decisions of this Court interpreting it, and the Necessary and Proper Laws Clause, confirm that, except in areas of purely local concern, the general maritime law is to prevail throughout the country.

Admiralty has developed a great body of well established law. It is essential that such law be uniform. Shipowners, and maritime operators worldwide, are enti-

tled to know that uniform law will apply in all maritime cases filed in the United States.

The Federal Government has exclusive jurisdiction and control over interstate and foreign transportation by sea. No state may impose, prohibit, or restrict, in a manner which places a burden on such transportation. Nor can state law interfere with the uniformity of maritime law as enforced by courts throughout the United States. Uniformity would be destroyed if state law, which happens to vary from federal law, is permitted to govern maritime causes of action.

As pointed out in Petitioner's brief, from *Southern Pacific v. Jensen* through *Air Logistics v. Tallentire,* the Supreme Court has consistently recognized federal supremacy and exclusivity and the need for uniformity in the field of maritime law.

If the Court of Appeal decision is allowed to stand, Louisiana will follow maritime law in that a ship can be attached by quasi in rem procedure, thus forcing the owner to appear. This procedure was conceived in, and has long been, an important part of maritime law.

Maritime law permits such attachment to be dismissed on the ground of forum non conveniens. It also permits conditioning such dismissal, for the benefit of plaintiffs, upon acquiescence by the shipowner to appear and defend the claim in a convenient forum. Such dismissal will not be permitted in Louisiana by this ruling.

Under federal maritime law the only question for consideration by the Court of Appeal would have been whether the trial court abused its discretion.

There was certainly no abuse of discretion. The trial court exercised discretion in exactly the manner approved in the *Lauritzen/Rhoditis/Gilbert* line of cases, cited by Petitioners.

We respectfully suggest that the Louisiana Court of Appeal erred in treating the conditional dismissal as merely procedural. This overlooked the fact that it required consideration of factors which have been declared pertinent in deciding whether lack of local private, or public, concern makes it proper to decline jurisdiction. The trial court considered these factors and decided justice would best be served in a court in Greece.

Canada Malting Co. v. Paterson Steamships, 285 U.S. 413, involved a collision in United States territorial waters. The trial court dismissed on the ground of forum non conveniens on the basis that Canadian jurisdiction was more appropriate. This court held the trial court had unqualified discretion to decline jurisdiction in suits in admiralty. It was also noted that "forum shopping" is undesirable.

2. This Court Has Power to Supervise Maritime Litigation in the United States.

It is settled law that under the Supremacy Clause of the Constitution a State court can be required to adjudicate Federal claims even if the same court might not have jurisdiction to hear similar claims arising solely under State law. *See Testa v. Katt,* 330 U.S. 386 (1947); *Mondou v. New York, N.H. & H.R.R.,* 223 U.S. 1 (1912).

This matter arises under the permissive grant of jurisdiction to State courts to hear maritime cases within the "saving-to-suitors" clause. *28 U.S.C. § 1333(1).* The important question is whether, in a maritime case, where failure to dismiss by a Federal court would be an abuse of discretion, the Supreme Court may prohibit a State court from retaining jurisdiction.

The decision may seem to be only a parochial ruling by an intermediate State appellate court. But New Orleans is one of the nation's major seaports and accounts for a

significant percentage of maritime litigation, especially personal injury litigation. If an alien plaintiff, simply by seizing a ship, owned by non United States citizens, under State quasi in rem process, rather than Federal maritime process, can avoid dismissal of a State court maritime action which would unquestionably be dismissed in a Federal court, forum shopping in the courts of Louisiana will undoubtedly follow.

In *Piper Aircraft Co. v. Reyno,* 454 U.S. 252, the court held that if a court could not dismiss a case on the ground of forum non conveniens "the American courts which are already extremely attractive to foreign plaintiffs, would become even more attractive. The flow of litigation into the United States would increase and further congest already crowded courts."

CONCLUSION

We most respectfully urge this Honorable Court to grant the Petition for Certiorari.

DATED: September 5, 1986.

JOHN C. MCHOSE
FRANCIS J. O'BRIEN
RICHARD W. PALMER
MICHAEL MARKS COHEN
725 South Figueroa Street
Los Angeles, CA 90017
(213) 488-7100
Attorneys for the Maritime Law Association of the United States as Amicus Curiae

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On September 5, 1986, I served the within Motion To File Amicus Curiae Brief and Brief In Support Of A Petition For A Writ Of Certiorari in re: "Arkon Shipping Agency, Inc. vs. Amalia Kassapas" in the United States Supreme Court, October Term 1986, No. .....;

on the Parties in said action, by placing three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

Gerard T. Gelpi
Gelpi, Sullivan, Carroll & Laborde
430 Notre Dame Street
New Orleans, Louisiana, 70130

Paul H. Dué
Dué, Anderson & Adams
5555 Hilton Avenue, 5th Floor
Baton Rouge, Louisiana, 70808-2523

All Parties required to be served have been served.

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on September 5, 1986, at Los Angeles, California

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